

BUSINESS

SEGMENT

**PARTNERSHIPS
AND TRUSTS**
AUDIENCE

INSTRUCTIONS

FORMAT

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Australian Government
Australian Taxation Office

Partnership and trust tax returns instructions 2009

To help you complete the partnership and trust tax returns
for 1 July 2008 – 30 June 2009



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CONTENTS

About these instructions
Publications and services

INTRODUCTION

What's new?

GENERAL INFORMATION

Australian business register
International taxation
Foreign exchange measures
Family trust elections and interposed entity elections
Electronic lodgments
Information matching
Hobby or business
Private ruling by the Commissioner of Taxation
Penalties and interest charges
Purchase or sale of a business during the income year
Record keeping requirements
Partnerships **P**
Trusts **T**

SCHEDULES

Capital allowances schedule
Capital gains tax (CGT) schedule **T**
Losses schedule **T**
Non-individual PAYG payment summary schedule
Personal services income schedule
Thin capitalisation schedule

COMPLETING THE TAX RETURN

PAGE 1 PARTNERSHIP TAX RETURN

Attachments to the tax return
Tax file number (TFN)
Name of partnership
Australian business number (ABN)
Full name of the partner to whom notices should be sent
Interposed entity election status
TFN of former partnership
Final tax return

PAGE 1 TRUST TAX RETURN

Attachments to the tax return
Tax file number (TFN)
Name of trust

3	Australian business number (ABN)	23
3	Full name of the trustee to whom notices should be sent	23
4	Family trust/interposed entity election status	23
4	Type of trust	27
	Is any tax payable by the trustee?	28
8	Final tax return	28
8	Electronic funds transfer (EFT)	28
8	REMAINDER OF PARTNERSHIP TAX RETURN AND TRUST TAX RETURN	29
9	1 Description of main business activity	29
9	2 Status of business	29
9	4 Did you sell any goods or services using the internet?	30
9		
10	INCOME EXCLUDING FOREIGN INCOME	30
11	5 Business income and expenses	30
11	Income	31
13	Expenses	32
15	Reconciliation items	40
18	6 Tax withheld	43
18	7 Credit for interest on early payments – amount of interest T	43
18	8 Partnerships and trusts	44
18	Primary production	45
19	Non-primary production	45
19	Share of credits from income	46
19	9 Rent	47
20	10 Forestry managed investment scheme income	48
20	11 Gross interest	50
20	12 Dividends	51
20	13 Superannuation lump sums and employment termination payments	52
20	14 Other Australian income	54
20	15 Total of items 5 to 14	55
20		
20	DEDUCTIONS	56
22	16 Deductions relating to Australian investment income	56
22	17 Forestry managed investment scheme deduction	56
23	18 Other deductions	57
23	19 Total of items 16 to 18	58
23	20 Net Australian income or loss	58
23	21 Capital gains T	59

FOREIGN INCOME

22	Attributed foreign income	
23	Other assessable foreign source income	
24	Total of items 20 to 23	
25	Tax losses deducted T	
26	Total net income or loss T	
27	Losses information T	
28	Landcare and water facility tax offset T	
29	Overseas transactions	
	Transactions with specified countries	
	Interest T	
30	Personal services income	

KEY FINANCIAL INFORMATION

31	All current assets	
32	Total assets	
33	All current liabilities	
34	Total liabilities	
35	Proprietors' funds	

BUSINESS AND PROFESSIONAL ITEMS

36	Business name of main business	
37	Business address of main business	
38	Opening stock	
39	Purchases and other costs	
40	Closing stock	
41	Trade debtors	
42	Trade creditors	
43	Total salary and wage expenses	
44	Payments to associated persons	
45	Intangible depreciating assets first deducted	
46	Other depreciating assets first deducted	
47	Termination value of intangible depreciating assets	
48	Termination value of other depreciating assets	
49	Deduction for project pool	
50	Section 40-880 deduction	
51	Small business and general business tax break	
52	Fringe benefit employee contributions	
53	Interest expenses overseas	
54	Royalty expenses overseas	
55	Landcare operations and deduction for decline in value of water facility T	
56	Deduction for environmental protection expenses	
57	Unpaid present entitlement to a private company T	
58	Trading stock election	
59	Small business entity depreciating assets	
60	Entrepreneurs' tax offset	
61	National Rental Affordability Scheme tax offset	
62	Medicare levy reduction or exemption T	

60 STATEMENTS OF DISTRIBUTION 76

60	63	Statement of distribution P	76
61	63	Statement of distribution T	78
62		Entrepreneurs' tax offset information T	82
62		Non-resident beneficiaries – additional information T	82
64		Trustee beneficiary (TB) statement information	84
64	64	Beneficiary under legal disability who is presently entitled to income from another trust T	84
64	65	Non-resident trust T	84
65		Declarations	85

66 WORKSHEETS 86

67 APPENDIXES 93

67	Appendix 1	Dividends	93
67	Appendix 2	Royalties	95
67	Appendix 3	Thin capitalisation	95
67	Appendix 4	Commercial debt forgiveness	96
67	Appendix 5	Capital works deductions and other tax offsets	98
67	Appendix 6	Uniform capital allowances	101
67	Appendix 7	Deductions applicable to partners P	110
68	Appendix 8	Trust loss and bad debt legislation – Schedule 2F to the <i>Income Tax Assessment Act 1936</i> T	111
68	Appendix 9	Instructions to trustees of deceased estates T	112
69	Appendix 10	Instructions to trustees where a beneficiary is under 18 years of age – other than trustees of deceased estates T	116
70	Appendix 11	Rates of tax payable by trustees on behalf of beneficiaries under 18 years of age T	121
70	Appendix 12	Trustee beneficiary reporting T	122
71	Appendix 13	Trust assessment codes T	125
71	Appendix 14	Small business entities	126
71		Abbreviations	128
71		Publications referred to in these instructions	129

71 LODGMENT 131

72 PAYMENT 131

72 INDEX 133

72 MORE INFORMATION 136

ABOUT THESE INSTRUCTIONS

The *Partnership and trust tax returns instructions 2009* will help you complete the *Partnership tax return 2009* (NAT 0659) and the *Trust tax return 2009* (NAT 0660).

The instructions include:

- information about the schedules that partnerships and trusts might need to complete and attach to their tax returns
- details of record keeping requirements
- separately identified information for partnerships and trusts.

When we refer to 'you' or 'your business' in these instructions, we are referring either to you as a business entity – the partnership or trust – that conducts a business, or to you as the tax agent, partner or trustee responsible for completing the tax return.

PUBLICATIONS AND SERVICES

To find out how to get a publication referred to in these instructions and for information about our other services, see the inside back cover.

INTRODUCTION

These instructions will help you complete the *Partnership tax return 2009* (NAT 0659) and the *Trust tax return 2009* (NAT 0660). They are **not** a guide to income tax law. You may need to refer to other publications. See pages 129–130 for a full list of publications referred to in these instructions and the inside back cover for information about how to get them.

These instructions contain abbreviations for names or technical terms. Each term is spelt out the first time it is used and there is also a list of abbreviations on page 128.

NOTE

Parts of this publication apply only to the partnership tax return or the trust tax return. These parts are identified by:

- the symbols **P** and **T** respectively
- green shaded text for partnerships and purple shaded text for trusts.

WHAT'S NEW?

Managed investment trusts: election to use CGT treatment for disposal of certain property

In the 2009 Federal Budget the Government announced changes that will allow Australian managed investment trusts (MITs), except those that are taxed like companies, to make an irrevocable election to apply the capital gains tax (CGT) regime as the primary code for taxing certain disposals of eligible investments. These changes will apply from the 2008–09 income year.

Special disability trusts: changes to the taxation of unexpended income and to the capital gains tax main residence exemption

In the 2009 Federal Budget the Government announced changes to the taxation of special disability trusts.

From the 2008–09 income year, the unexpended income of a special disability trust will be taxed at the relevant beneficiary's personal income tax rate rather than automatically at the top personal tax rate plus Medicare Levy.

From the 2009–10 income year, the capital gains tax exemption for a taxpayer's main residence will be extended to include a residence that is owned by a special disability trust and used by the relevant beneficiary as their main residence.

At the time of printing these instructions, legislation had not been enacted to give effect to the measure. If you are lodging a Special Disability Trust return for the 2008–09 income year check our website at www.ato.gov.au for how to complete the return and information about the progress of the Bill that includes this measure.

Natural disasters

We have special arrangements in place for people affected by the recent natural disasters such as the Queensland and northern New South Wales floods, and the Victorian bushfires.

If your tax records were lost or destroyed, we can help you to reconstruct them, and make reasonable estimates where necessary.

We have set up a dedicated emergency support infoline to assist you – phone **1300 304 975** and one of our officers will discuss your situation and the best way we can help.

Other ways we can help are:

- we can fast track refunds
- we can give you extra time to pay debts – without interest charges
- we can give you more time to meet activity statement, income tax and other lodgment obligations – without penalties
- we can help you if you are experiencing serious hardship.

Taxation exemption for clean-up and restoration grants

The clean-up and restoration grants paid to small businesses and primary producers affected by the Victorian bushfires will be exempt from tax, as announced in the 2009 Federal Budget.

Taxation of financial arrangements

The *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* will change the way certain financial arrangements held by some partnerships and trusts are treated for income tax purposes. It introduces a new Division 230 into the *Income Tax Assessment Act 1997 (ITAA 1997)* and broadly sets out the:

- method – accruals, realisation, fair value, retranslation, hedging, and financial reports – for calculating gains and losses on financial arrangements
- time at which the gains and losses will be brought to account for income tax purposes.

! This will not affect your taxable income for 2008–09 or how your 2008–09 income tax return is completed. However, depending on your circumstances, you may want to make certain elections which need to be made by the due date for lodgment of the 2008–09 income tax return.

Which entities are affected?

Division 230 will apply to:

- authorised deposit-taking institutions, securitisation vehicles and financial sector entities with an aggregated annual turnover of \$20 million or more
- managed investment schemes or entities substantially similar to a managed investment scheme under foreign law if the value of their assets is \$100 million or more
- other entities with an aggregated annual turnover of \$100 million or more, assets of \$300 million or more, or financial assets of \$100 million or more.

All partnerships and trusts will be subject to Division 230 in respect of any qualifying securities they hold that end more than 12 months after they start to have them. This applies regardless of the partnership or trust's annual turnover and assets.


A trust or partnership whose financial arrangements, other than qualifying securities, are not subject to Division 230 can elect to have Division 230 apply to those financial arrangements. Once made, this election is irrevocable.

Date of effect

Division 230 applies to financial arrangements that a trust or partnership starts to have in income years starting on or after 1 July 2010. However, a trust or partnership can elect to have Division 230 apply to financial arrangements it starts to have in income years starting on or after 1 July 2009.

Existing financial arrangements election

A trust or partnership can also elect to have Division 230 apply to financial arrangements it started to have prior to the first income year in which Division 230 applies to it, and that the trust or partnership holds at the start of that year.

 This election to bring in existing financial arrangements must be notified to the Commissioner on or before the lodgment due date of the:

- trust's or partnership's 2008–09 income tax return (if the first year to which Division 230 applies is the 2009–10 income year)
- trust's or partnership's 2009–10 income tax return (if the first year to which Division 230 applies is the 2010–11 income year).

There may be modifications to the above dates for taxpayers with substituted accounting periods and an 'early' balance date.

Making elections

For further information on how to make these elections and how to notify the Commissioner, see our website www.ato.gov.au/tofa

Small business and general business tax break

The *Tax Laws Amendment (Small Business and General Business Tax Break) Act 2009* has introduced an investment tax break for Australian businesses. Broadly, the tax break provides an additional tax deduction of 50% for small business entities, 30% or 10% for all other business entities, of the cost of eligible new tangible assets that are to be used in a business and for which a deduction is available under the core provisions of Division 40 of the *Income Tax Assessment Act 1997* (ITAA 1997). In order to claim the tax break, certain conditions must be satisfied, for example, the eligible asset must be acquired and first used, or installed ready for use, within a specified timeframe.

Capital gains tax – extension of small business concessions

The Government announced that it will legislate to increase access to the small business capital gains tax (CGT) concessions for:

- taxpayers owning a CGT asset used in a business by a related entity
- partners owning a CGT asset used in a partnership business.

These changes will take effect from the 2007–08 income year. At the time of printing these instructions, this measure had not become law. For more information, visit our website at www.ato.gov.au or phone the Business Infoline (see the inside back cover).

Capital gains tax – further amendments to the small business concessions

In the 2009 Federal Budget, the Government announced a transitional rule that will extend the time for taxpayers to choose to access the small business concessions, where that choice arises from changes to the concessions announced in the 2008 Federal Budget and the 2008–09 Mid-Year Economic and Fiscal Outlook. This extension of time will apply to CGT events that happen before the day on which the amending legislation receives royal assent.

The concessions for assets acquired on the death of an individual will be extended to cover assets that have passed to a testamentary trust, where the individual would have been able to access the concessions at the time of their death. This extension will apply to CGT events that happened in the 2006–07 and later income years.

The provisions which treat as dividends certain distributions to entities connected with a private company will be excluded from applying to the small business CGT retirement exemption. This exclusion will apply from the royal assent of the amending legislation.

This measure was introduced into Parliament together with the changes to the concessions that were announced on 19 March 2009.

Removal of the capital gains tax trust cloning exception

On 31 October 2008 the Government announced its intention to remove the CGT trust cloning exception to CGT events E1 and E2. The proposed amendments will apply to CGT events happening on or after 1 November 2008. However, at the time of printing these instructions, this measure had not become law. For more information, go to our website www.ato.gov.au and enter 'New legislation' in the 'Search for' box at the top of the page.

Capital gains tax: limited roll-over for fixed trusts

In the 2009 Federal Budget the Government announced a limited CGT roll-over for assets transferred between trusts that have the same beneficiaries with the same entitlements and no material discretionary elements (typically referred to as fixed trusts) with effect from 1 November 2008.

As a result of this measure, trustees of eligible trusts will be able to defer the CGT consequences of the asset transfer until the receiving trust subsequently deals with the asset. This will allow eligible trusts to restructure without immediate CGT consequences. The measure will be accompanied by appropriate integrity rules.

The removal of the CGT trust cloning exception and the CGT roll-over for fixed trusts will be combined into one set of amendments.

National Rental Affordability Scheme

The National Rental Affordability Scheme (NRAS) is designed to encourage large-scale investment in affordable housing. The Scheme offers incentives to providers of new dwellings on the condition that they are rented to low and moderate income households at 20 per cent below market rates. A refundable tax offset is available where the Housing Secretary from the Department of Families, Housing, Community Services and Indigenous Affairs has issued a certificate under the NRAS.

For more information about these rules, refer to page 75.

Family trust elections and interposed entity elections

The proposed changes announced in the 2008 Budget to reverse two previous amendments in Schedule 2F to the *Income Tax Assessment Act 1936* contained in Tax Laws Amendment (2007 Measures No. 4) Act 2007 are no longer proceeding.

Trustee beneficiary reporting requirements

Tax Laws Amendment (2007 Measures No. 4) Act 2007 amended the reporting obligations for trustees of closely held trusts from the first income year starting on or after 24 September 2007. For most trustees the income year that commenced on 1 July 2008 is the first year that a trustee beneficiary (TB) statement will be required to be completed under these rules.

The new obligations require trustees of closely held trusts to report distributions to trustee beneficiaries in a TB statement.

Trustees who are required to lodge a correct TB statement will do so in the trust tax return. The information for the TB statement is reported at item **63 Statement of distribution** in the trust tax return. For more information about these reporting rules, see appendix 12.

If a trustee is required to complete a TB statement and does not lodge it within the specified period, the trustee may be liable for trustee beneficiary non-disclosure tax (TBNT). For more information see appendix 12.

Foreign losses and foreign income tax offset rules

New foreign income tax offset rules were introduced by the *Tax Laws Amendment (2007 Measures No. 4) Act 2007*. The new rules apply in relation to income years, statutory accounting periods and notional accounting periods starting

on or after 1 July 2008. The new foreign income tax offset rules replace the former foreign tax credits and foreign losses regimes that applied for the 2007–08 and prior income years. In particular, the quarantining of foreign losses and foreign tax credits into separate ‘classes’ has been removed.

Foreign losses incurred on or after 1 July 2008 are not quarantined from domestic income or from other foreign losses of a different class. You are not required to elect to apply domestic losses against foreign income. There is no distinction between a foreign loss and a domestic loss for the purpose of calculating taxable income.

However, a transitional rule applies in relation to existing foreign losses. You are entitled to convert certain pre-existing overall foreign losses into ordinary tax losses and deduct them from the assessable income in the commencement year and later years, subject to certain restrictions. The transitional rules require the extinguishment of certain foreign losses on conversion and impose an annual limit on the use of the remaining losses for the first four years of the measure. You may disregard the deduction limit in these years in certain circumstances.

Partnerships are currently unable to utilise foreign losses carried forward from prior years. The Government has announced that legislation will be introduced into Parliament to allow partnerships to utilise foreign losses carried forward from prior years in the same manner as other entities. At the time of printing these instructions, the legislation to give effect to the measure had not been enacted. Check our website at www.ato.gov.au for details on how to complete your return and information about the progress of the Bill that includes this measure.

Under the new rules there is no carry-forward of excess foreign income tax for use in a later year. An exception applies to excess foreign tax pertaining to the five years prior to commencement of the new rules.

The amount of the tax offset equals the sum of each amount of eligible foreign income tax paid, subject to a limit (cap). Certain taxpayers are deemed to have paid foreign income tax when it has been paid by someone else (for example, a trustee or partnership) or if the foreign income tax has been withheld from the income at its source.

The foreign tax offset cap is based on the amount of Australian tax payable on the double-taxed amounts and other assessable income amounts that do not have an Australian source.

For more information refer to our publication *Changes to foreign loss quarantining and foreign tax credit rules – Update October 2008 – Fact Sheet* on our website.

Depreciation

(a) In-house computer software

The *Tax Laws Amendment (Budget Measures) Act 2008* amended the *Income Tax Assessment Act 1997* to increase the period over which taxpayers write off for tax purposes depreciable in-house computer software from 2.5 years to four years. This applies to expenditure on

in-house software that you started to develop or hold on or after 7.30pm Australian Eastern Standard Time (AEST) on 13 May 2008.

(b) Revision of effective life of certain depreciating assets

The Commissioner's determination of the effective life of depreciating assets has been amended with effect from 1 July 2008 – see *Taxation Ruling TR 2008/4 Income tax: effective life of depreciating assets (applicable from 1 July 2008)*. The Tax Office has prepared a consolidated version of the amended determination which is set out in the schedule to TR 2008/4. If, for a particular asset, the partnership or trust was using an effective life from the determination that was in force before the latest amendment (for example, as contained in the schedule to Taxation Ruling TR 2007/3), that should continue to be used for that asset.

New, final withholding tax arrangement for certain distributions of Australian managed investment trusts to foreign residents

Tax Laws Amendment (Election Commitment No. 1) Act 2008 introduced a final withholding tax regime for fund payments made to foreign investors by managed investment trusts (and custodians) in the first income year starting on or after 1 July 2008.

A fund payment is the component of a payment made by the trustee of a managed investment trust that, in effect, represents a distribution of the net income of the trust disregarding certain amounts.

Under the new legislation, the previous non-final withholding regime has been replaced with a new final withholding tax regime.

Where the foreign investor is resident in a jurisdiction with which Australia has an effective exchange of information for taxation matters, the rate of withholding tax will be 22.5% for fund payments made in relation to the first income year commencing on or after 1 July 2008. In any other case, the withholding liability will be imposed at 30%.

Carbon sink forests

The *Tax Laws Amendment (2008 Measures No. 2) Act 2008* encourages the establishment of carbon sink forests to reduce greenhouse gas emissions.

This law allows the following deductions for the costs incurred in establishing trees in a carbon sink forest:

- For such trees established in the 2007–08, 2008–09, 2009–10, 2010–11 or 2011–12 income year, you can claim an immediate deduction for the costs of establishing the trees.
- For such trees established in the 2012–13 or a later income year, you can claim a maximum capital write-off rate of 7% of the costs of establishing the trees (conditions apply).

You can find these new rules in Subdivision 40-J of the ITAA 1997. For further information, visit our website at www.ato.gov.au

Tobacco Growers Adjustment Assistance Program 2006

Tax Laws Amendment (2008 Measures No. 2) Act 2008 amended the ITAA 1997 to provide tax-free grants under the Tobacco Growers Adjustment Assistance Programme 2006 to growers who undertake to exit all agricultural enterprises for at least five years. In October 2006, the then Minister for Agriculture, Fisheries and Forestry announced that tobacco growers would receive up to \$150,000 from the Australian Government to assist them to move into alternative business activities.

Generally, government grants paid to assist businesses to exit an industry are assessable under the CGT provisions, rather than as ordinary or statutory income. To overcome this, the amendments result in:

- Section 53-10 of the ITAA 1997 listing the Tobacco Growers Adjustment Assistance Programme 2006 grant as exempt income
- subsection 118-37(1) of the ITAA 1997 exempting the Tobacco Growers Adjustment Assistance Programme 2006 grant from CGT for grant recipients who fulfill certain conditions.

This measure will apply to payments made in 2006–07 and later income years. Taxpayers who:

- signed an agreement to exit all agricultural enterprises for five years from the date of payment; and
 - have lodged their 2006–07 or 2007–08 income tax return and included their grant as a capital gain
- should seek an amendment to remove the capital gain in the relevant income tax return.

Changes to eligible investment business rules for public unit trusts

Tax Laws Amendment (2008 Measures No. 5) Act 2008 amended Division 6C of the ITAA 1936 to streamline the eligible investment business rules for managed funds.

The amendments make it easier for managed funds, particularly property trusts, to comply with the law by reducing the scope for inadvertently breaching Division 6C of the ITAA 1936. The amendments, effective from 1 July 2008:

- clarify the scope and meaning of *investing in land* for the purpose of deriving rent
- introduce a 25% *safe harbour* allowance for non-rental, non-trading income from investments in land
- expand the range of financial instruments that a managed fund may invest in or trade
- provide a 2% *safe harbour* allowance at the whole of trust level for non-trading income.

The amendments do not affect the operation of the control test in section 102N of the ITAA 1936. Those rules continue to disallow the trustee of the trust owning or controlling entities carrying on active trading businesses.

GENERAL INFORMATION

AUSTRALIAN BUSINESS REGISTER

We are authorised by the *A New Tax System (Australian Business Number) Act 1999* to collect certain information relating to your entity. We may use business details supplied on your tax return to update your trading name, industry classification, status of business, wind-up date, public officer, email address and main business address on the Australian Business Register (ABR). We may also use postal address details from your tax return if we cannot contact you through your ABR postal address.

Where authorised by law, selected information on the ABR may be made publicly available and some may be passed to government agencies, including Commonwealth, state and local government agencies.

You can find details of agencies regularly receiving information from the ABR at www.abr.gov.au. You can also phone us on **13 28 66** between 8.00am and 6.00pm Monday to Friday and ask for a list of the agencies to be sent to you.

These agencies may use ABR information for purposes authorised by their legislation or for carrying out other functions of their agency. Examples of possible uses include registration, reporting, compliance, validation and updating databases.

In addition to the publicly available information, these agencies can also access the:

- name of the entity's associates such as partner, trustee or public officer
- entity's address for service of notices
- entity's principal place of business
- entity's email address
- Australian and New Zealand Standard Industrial Classification (ANZSIC) code for the business conducted by the entity.

INTERNATIONAL TAXATION

Broadly, 'foreign hybrid' means entities such as non-resident limited partnerships, limited liability companies in the United States of America and other similar entities that are taxed on a partnership basis in their country of formation – that is, the overseas jurisdiction taxes the members on their share of the entity's income. The entity itself is not taxed.

Under Division 830 of the ITAA 1997, non-resident limited partnerships and other foreign hybrids are treated as partnerships and not as companies for Australian income tax purposes if certain conditions are satisfied. Investors in these entities are treated for Australian tax purposes as having partnership interests. There are special rules in addition to those that normally apply to partnerships.

For more information about foreign hybrids, visit our website.

FOREIGN EXCHANGE MEASURES

Under the foreign exchange (forex) measures, forex gains and losses are generally brought to account, as assessable income or allowable deductions, when realised.

The measures cover both foreign currency denominated arrangements, and broadly, arrangements to be cash-settled in Australian currency with reference to a currency exchange rate. Some forex gains and losses of a private or domestic nature, or in relation to exempt income or non-assessable non-exempt income, are not brought to account under the forex measures.

If a forex gain or loss is brought to account under the forex measures and under another provision of the tax law, it is assessable or deductible only under the forex measures.

In general, these gains and losses will not be assessable or deductible under the forex measures if they arise from certain acquisitions or disposals of capital assets, or acquisitions of depreciating assets, and the time between the acquisition or disposal and payment is no more than 12 months. Instead, any forex gain or loss is usually matched with or integrated into the tax treatment of the underlying asset.

The general translation rule requires all tax-relevant amounts to be expressed in Australian currency regardless of whether there is an actual conversion of that foreign currency into Australian dollars.

The tax consequences of gains or losses on existing foreign currency assets, rights and obligations that were acquired or assumed before 1 July 2003 are determined under the law as it was before that date unless:

- you have made a transitional election that brings these under the forex measures, or
- there is an extension of an existing loan (for example, an extension by a new contract or a variation to an existing contract) that brings the arrangement within these measures.

More information about these measures and on how to calculate your foreign exchange realisation gains and losses is available at www.ato.gov.au (search for 'forex').

FAMILY TRUST ELECTIONS AND INTERPOSED ENTITY ELECTIONS

The *Tax Laws Amendment (2007 Measures No. 4) Act 2007* amended Schedule 2F to the ITAA 1936 to:

- allow family trust elections to be revoked if the family trust is a fixed trust and if the family trust election was not required for utilisation of tax losses, bad debt deductions or accessing franking credits. If a family trust election is revoked you need to complete a *Family trust election, revocation or variation 2009* (NAT 2787) and attach it to the trust's tax return
- allow interposed entity elections to be revoked where the election was made for an entity that was already included in the family group of the individual specified in the family trust election at the election commencement time. An interposed entity election may also be revoked at a later time where the entity becomes wholly owned

by members of the family group. If an interposed entity election is revoked you need to complete an *Interposed entity election or revocation 2009* (NAT 2788) and attach it to the trust's tax return

- permit family trusts that have made a family trust election in respect of the same test individual to be included in each other's 'family group' and not treated as an 'outsider to the trust' for the purposes of the income injection test
- allow the test individual specified in a family trust election to be changed only once, where the new test individual was a member of the original test individual's family provided that no conferrals of present entitlement to (or distributions of) income or capital of the trust (or an interposed entity) have been made outside the new test individual's family group
- broaden the definition of 'family' to include lineal descendants of a nephew, niece, or child of the test individual or the test individual's spouse
- ensure that the death of a family member does not by itself result in another family member ceasing to be a member of the family
- exempt distributions made to former spouses, former widows/widowers and former stepchildren from family trust distribution tax by including them within the definition of 'family group'.

ELECTRONIC LODGMENTS

Tax agents who lodge partnership or trust tax returns through the electronic lodgment service (ELS) must complete the *Partnerships and trusts rental property schedule 2009* if item **9 Rent** is completed. You do not have to complete that schedule if you are lodging a paper version of the partnership or trust tax return.

INFORMATION MATCHING

The Tax Office is making increasing use of information-matching technology to verify the correctness of tax returns. Ensure that all information is fully and correctly declared on your tax returns. Certain claims that are made may be subject to additional scrutiny by the Tax Office.

In particular, we will be checking the following on the 2009 tax returns:

- distributions from partnerships and trusts – see pages 44–7
- total salary and wages paid against the pay as you go (PAYG) withholding system – see page 69
- interest and dividend income – see pages 50–2 and 93–5
- franking credits claimed. We will also check that distributions that include franked dividends are correctly grossed up
- Centrelink welfare type payments
- Medicare levy surcharge
- private health insurance tax offset.

HOBBY OR BUSINESS

It is important to determine whether the partnership or trust is carrying on a business as distinct from pursuing a hobby, sport or recreational activity that does not produce assessable income.

The factors or 'business indicators' that various courts and tribunals have taken into account in determining if a business exists for tax purposes include whether the activity:

- has actually started
- has a significant commercial purpose or character
- is undertaken with a purpose of profit as well as a prospect of profit
- is carried out in a manner that is characteristic of the industry
- has repetition, regularity and/or continuity
- is planned, organised and carried on in a business-like manner
- is of a sufficient size, scale and permanency to generate a profit
- is not more properly described as a hobby, recreation or sporting activity.

For more information, see **Are you carrying on a business?** in *Tax basics for small business* (NAT 1908).

If you are a primary producer, see also *Taxation Ruling TR 97/11 – Income tax: am I carrying on a business of primary production?*.

PRIVATE RULING BY THE COMMISSIONER OF TAXATION

A private ruling is a written expression of opinion by the Commissioner of Taxation (the Commissioner) about the way in which tax laws and other specified laws administered by the Commissioner would apply to, or be administered in relation to, an entity in relation to a specified scheme.

An application for a private ruling must be made in the approved form and in accordance with Divisions 357 and 359 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).

The required information and documentation that accompany a private ruling request must be sufficient for the Commissioner to make a private ruling and include:

- the entity to whom the ruling is to apply
- the facts describing the relevant scheme or circumstance
- relevant supporting documents such as transaction documents
- issues and questions raised that relate to the relevant provision to which the ruling relates
- your arguments and references on such questions.

The Commissioner may request additional information to make a ruling. The Commissioner will then consider the request and either issue or, in certain limited circumstances, refuse to issue a private ruling.

Publication

To further improve the administration of the private rulings system, the Tax Office now publishes all notices of private rulings for public record on our website at www.ato.gov.au

Private rulings are published in an edited form to safeguard taxpayer privacy.

Private ruling applicants are invited to provide a statement detailing any information they believe should be removed from the published version of their private ruling.

If the information the applicant wants removed is more than simply names and addresses, reasons why publication of this information will breach the applicant's privacy should be provided.

Before publication, applicants can comment on the edited version of their private ruling.

Review rights

Taxpayers can object to adverse private rulings or a failure to make a private ruling in much the same way that they can object to assessments. They can also seek a review of adverse objection decisions on a private ruling by the Administrative Appeals Tribunal (AAT) or a court. An explanation of review rights and how to exercise them is issued with the private ruling.

A taxpayer cannot object to a private ruling if an assessment has occurred covering the same facts and issues. The taxpayer could, of course, object to the assessment.

Where a taxpayer has objected against a private ruling the taxpayer cannot object against a later assessment about the same matter ruled on, unless the facts have changed.

Private rulings dealing with the ITAA 1936 continue to apply to the ITAA 1997, to the extent that the old law to which the ruling applies expresses the same ideas as the new law in the ITAA 1997.

Visit www.ato.gov.au for more information on how to object to private rulings and assessments, including the time limits within which those objections have to be made.

When rulings are binding

A private ruling is binding on the Commissioner where it applies to an entity and the entity has relied on the ruling by acting (or omitting to act) in accordance with the private ruling. An entity can stop relying on a private ruling at any time (unless prevented by a time limit imposed by a taxation law) by acting (or omitting to act) in a way that is not in accordance with the private ruling; and can subsequently resume relying on the private ruling by acting accordingly. The Commissioner cannot withdraw a private ruling. However, where the scheme to which a private ruling relates has not begun to be carried out and where the private ruling relates to an income year or other accounting period, and that period has not begun, the Commissioner can make a revised private ruling.

PENALTIES AND INTEREST CHARGES

The law imposes penalties on partners and trustees for:

- failing to lodge a tax return on time and in the approved form (which includes all applicable schedules)
- having a tax shortfall or over-claiming a credit that is caused by
 - making a false or misleading statement
 - taking a position that is not reasonably arguable
- refusing to provide a tax return from which the Commissioner can determine a liability
- failing to keep and produce proper records
- preventing access to premises and documents
- failing to retain or produce declarations.

Partners, trustees and beneficiaries are liable for the general interest charge where they have:

- not paid a tax, penalty or certain other amounts by the due date
- varied their PAYG instalment amount or rate to less than 85% of the amount or rate that would have covered the partner's, trustee's or beneficiary's actual liability on business and investment income for the year, or
- amended their income tax assessment to increase their liability (for the 2004–05 and later income years this interest charge is known as the 'shortfall interest charge').

Shortfall interest charge

From the 2004–05 income year, where an assessment is amended because of a tax shortfall, the due date for payment of the amended assessment is 21 days after the Commissioner gives the notice increasing the liability. Generally the partners or trustees are liable to pay a shortfall interest charge from the due date of the original assessment to the day before the issue date of the amended notice of assessment. The partners or trustees will be notified of the amount of the shortfall interest charge and it will be due 21 days after the notice is given. The general interest charge will apply automatically to any unpaid amount of the amended assessment and the shortfall interest charge once the due date has passed.

The shortfall interest charge is calculated at a rate 4% lower than the general interest charge.

The Commissioner may remit all or part of the shortfall interest charge when it is fair and reasonable to do so. For further information, visit www.ato.gov.au

Penalties

In addition to interest charges, penalties may be applied to any tax shortfall.

From the 2004–05 income year, there is no longer a specific penalty for a tax shortfall that arises as a result of failing to follow a private ruling. However, if a taxpayer does not follow a private ruling they have obtained, penalties may still apply for a tax shortfall that arises if, for example, they have not exercised reasonable care or do not have a 'reasonably arguable' position.

The Commissioner must explain, in writing, the reasons for a penalty and, if remission of a penalty has been considered but not fully granted, the reasons for the decision.

The law also makes clear that, when considering whether a penalty should be imposed, the Tax Office will consider a taxpayer's position to be 'reasonably arguable' if it would be concluded in the circumstances that what is argued for is about as *likely* to be correct as incorrect, or is *more likely* to be correct than incorrect.

For further information visit our website or phone the Business Infoline (see the inside back cover).

PURCHASE OR SALE OF A BUSINESS DURING THE INCOME YEAR

Keep a record of the following:

- the name and address of the other party to the transaction
- the purchase or sale price, including details of the allocation of purchase or sale price to all items purchased or sold, including stock on hand and depreciating assets
- a copy of the contract of purchase or sale.

T If there is no trustee who is an Australian resident, the onus is on the public officer to keep this information.

RECORD KEEPING REQUIREMENTS

Record keeping requirements and retention

If you are carrying on a business, you must keep records relevant for any taxation purpose that record and explain all transactions and other acts you are engaged in. Subsection 262A(2) of the ITAA 1936 prescribes the records to be kept as including:

- any documents that are relevant for the purpose of ascertaining the person's income or expenditure
- documents containing particulars of any election, estimate, determination or calculation made by the person for taxation purposes and, in the case of an estimate, determination or calculation, particulars showing the basis on which and the method by which the estimate, determination or calculation was made.

! You must keep these records for your financial arrangements covered by Division 230 of the *Income Tax Assessment Act 1997* even if you are not carrying on a business in relation to those arrangements.

Generally, the partnership or trust must keep all relevant records for five years after they were prepared or obtained, or five years after the completion of the transactions or acts to which they relate, whichever is the later. This period may be extended in certain circumstances. Keep records in writing and in English. You can keep them electronically as long as the records are in a form that we can access and understand to ascertain your taxation liability – see *Taxation Ruling TR 2005/9 – Income tax: record keeping – electronic records*.

Partnership records

P

Keep the following records:

- a copy of the partnership agreement. If none exists, a copy of the partnership's certificate of registration. If none exists, documentary evidence that partners were carrying on their activities as a partnership
- commencement date of the partnership or the date of reconstitution
- detailed statement of assets and liabilities
- details of each partner's capital accounts and sources of capital contributed
- details of each partnership bank account including the name and number of the account, the bank and branch at which it is kept, the date the account was opened and the names of persons authorised to operate the account and the date of such authorisation
- the family relationship of the partners and, if the partners are husband and wife, details of the nature and extent of the services rendered by each to the partnership
- whether the partners own jointly or in common, any property from which interest, dividends, rents or royalties are derived
- the names in which business contracts are made
- details of any services rendered in the production of assessable income by a partner under 18 years of age, or by a beneficiary under 18 years of age in a trust where the trustee is a partner – details must include the nature, extent and value of the services rendered
- whether the partnership is constituted or conducted such that any partners cannot, of their own will, deal with any part of their share of the partnership income
- whether any partners are required to use any part of their share of the profits to meet any debt to another person
- records that show you have met your choice of superannuation fund employer obligations – for more information, visit www.ato.gov.au/super or phone the Super Choice Infoline (see the inside back cover).

Trust record retention

T

Keep the following records:

- a copy of the trust deed
- a copy of all trustee resolutions
- detailed statement of assets and liabilities
- the names in which business contracts are made
- records that show you have met your choice of superannuation fund employer obligations – for more information, visit our website, www.ato.gov.au/super or phone the Super Choice Infoline (see the inside back cover).

Tax losses record keeping

If your trust incurs tax losses, you may need to keep records longer than five years from the date when the losses were incurred.

Generally, tax losses incurred this year can be carried forward indefinitely, until they are applied by recoupment. When applied, the loss amount is used in calculating the trust's net income (and beneficiary's taxable income) in that year. It is in the trust's interest to keep records substantiating the balance of this year's losses until the amendment period for the trust's or beneficiary's assessment for the recoupment year in which the losses are fully applied has lapsed.

See *Taxation Determination TD 2007/2 – Income tax: should a taxpayer who has incurred a tax loss or made a net capital loss for an income year retain records relevant to the ascertainment of that loss only for the record retention period prescribed under income tax law?*.

Capital gains tax record keeping

T

For more record keeping information for CGT, see the *Guide to capital gains tax 2009* (NAT 4151).

e-Record

e-Record is an electronic record keeping package we have developed to help small and micro businesses and non-profit organisations keep good business records.

It is designed for businesses that use a cash basis of accounting and wish to make the transition from paper-based products to an electronic record keeping package. It is not designed for businesses already using a commercially available accounting software package.

It consists of easy-to-use electronic worksheets that produce daily and weekly information as well as monthly, quarterly and annual summaries, with the added benefit of automatic calculations and consolidations to help businesses complete their activity statements.

You can download the latest version of *e-Record* from our website at www.ato.gov.au/erecord or obtain a copy of the CD-ROM by phoning **1300 139 051**.

Record keeping for overseas transactions

Keep records of any overseas transactions in which the partnership or trust is involved – or has an interest – during the income year.

The involvement can be direct or indirect – for example, through individuals, trusts, companies or other entities. The interest can be vested or contingent, and includes a case where the partnership or trust has direct or indirect control of:

- any income from sources outside Australia not disclosed elsewhere on the tax return, or
- any property – including money – situated outside Australia. Where this is the case keep a record of
 - the location and nature of the property
 - the name and address of any partnership, trust, business, company, or other entity in which the partnership or trust has an interest
 - the nature of the interest.

If an overseas interest was created by exercising any power of appointment, or if the partnership or trust had an ability to control or achieve control of overseas income or property, keep a record of:

- the location and nature of the property
- the name and address of any partnership, trust, business, company, or other entity in which the partnership or trust has an interest.

T If there is no trustee who is an Australian resident the onus is on the public officer to keep this information.

PARTNERSHIPS



A partnership is an association of persons carrying on a business as partners or receiving income jointly – see *Taxation Ruling TR 94/8 – Income tax: whether business is carried on in partnership (including ‘husband and wife’ partnerships)*.

A partnership is not a taxable entity but it must lodge a tax return at the end of each income year. Partners are taxed on their share of the profits of the partnership or are entitled to a deduction for their share of the losses incurred by the partnership as disclosed on their own tax returns.

Some deductions are not available to the partnership but may be claimed by the partners – see **appendix 7**.

A partnership asset is owned by the partners (and not the partnership) in the proportion to which the partners have agreed. A partner's share of the capital gains or losses relating to CGT events occurring in relation to partnership assets must be disclosed on that partner's tax return. Refer to **Partnerships and capital gains tax** on the next page for further information.

Non-resident partner

A partner who is not a resident of Australia is not taxed on the share of net income of the partnership attributable to sources outside Australia. If it is believed that any partner who has a share of such income is not an Australian resident, keep a record of their name and residential address, the basis of any contention and the partner's share of income derived from sources outside Australia.

Variation of partnership agreement

Keep a copy of any variation to the partnership agreement for the life of the partnership plus five years.

Reconstituted partnerships

Under the law, if the composition of a partnership changes – for example a partner retires or dies or a new partner is admitted – the partnership is dissolved and a new partnership is formed.

However, if the change in the composition amounts only to a technical dissolution of the partnership, the partnership may be able to continue as a reconstituted continuing entity. As such it avoids the need to change its tax file number (TFN) and Australian business number (ABN), and only one partnership tax return is required at the end of the income year.

The Tax Office will treat a changed partnership as a reconstituted continuing entity if the original partnership agreement incorporated a provision for a change in membership or shares and the following factors apply:

- the partnership is a general law partnership
- at least one of the partners is common to the partnership before and after reconstitution

- there is no period where there is only one ‘partner’ (that is, in a two person partnership, there is a direct transfer of interest from the outgoing partner to a new partner)
- the partnership agreement includes an express or implied continuity clause
- there is no break in the continuity of the enterprise or firm, that is, the partnership's assets remain with the continuing partnership and there are no changes to the nature of the business, the client or customer base, the business name or name of the firm.

For more information, see *GSTR 2003/13 – Goods and services tax: general law partnerships*.

At the end of the income year, a reconstituted continuing partnership needs to lodge only one partnership tax return covering the full income year. The tax return must include the distributions made to every person who was a partner at any time during the income year, including those who left the partnership during the year.

When lodging the partnership tax return, supply the following details:

- the date of the dissolution
- the date of the reconstitution
- the names of the new, continuing and retiring partners
- the TFN or address and date of birth of all new partners
- details of the changes if the persons authorised to act on behalf of the partnership changed.

If the changes in membership amount to more than a technical dissolution of the partnership, a new partnership is formed. This new partnership needs a new TFN and ABN. Both partnerships will need to lodge a partnership tax return. Lodge one tax return for the old partnership from the beginning of the income year to the date of its dissolution. Lodge another tax return for the new partnership from the date of its formation to the end of the income year.

Lodging a partnership tax return

A partnership tax return is lodged by the partners resident in Australia or by the senior partner. If there is no resident partner, the agent in Australia lodges the tax return. For information relating to non-residents, see **Non-resident partner** in the previous column.

Keep a copy of the partnership tax return and related documents as there may be a charge for obtaining a copy from the Tax Office.

Send the partnership tax return to the relevant lodgment address listed on page 131.

Do not lodge a partnership tax return where:

- the only income derived jointly (or in common) with another person was
 - rent from a jointly owned property
 - interest from a jointly held account
 - dividends from jointly held shares

and you were not in a partnership carrying on a business (in these three instances each person shows their share of the income and expenses at the appropriate items on their own tax return)

- the partnership was a subsidiary member of a consolidated group for the full income year, or
- an application for exemption from lodging a partnership tax return has been approved by the Tax Office.

Exemption from lodging a partnership tax return

An exemption may be granted if each partner gives an undertaking to provide details of all relevant income, expenditure and deduction items, as well as distribution details, in their own tax return.

The application for exemption must confirm that the partners have authorised their tax agent to show information pertaining to the partnership on each partner's tax return. If granted, an exemption applies to all future year tax returns until the partners or the Tax Office cancels the exemption.

An exemption will not be granted if a partner is claiming a credit for amounts withheld under the no ABN withholding rules from payments made to a partnership.

Limited partnerships

Certain limited partnerships which are taxed as companies must lodge a *Company tax return 2009* (NAT 0656).

This does not apply to a limited partnership (including an incorporated limited partnership) that is a venture capital management partnership, or a limited partnership that is unconditionally registered with Innovation Australia as a venture capital limited partnership, an early stage venture capital limited partnership, or an Australian venture capital fund of funds. These limited partnerships are taxed as ordinary partnerships (subject to special rules about the utilisation of their losses) and are not taxed as companies.

Other attachments to the tax return

In some cases we need more information about the partnership to raise correct assessments for the individual partners. These are:

- where the partnership attaches an election, notification, request or application when lodging the partnership tax return
- where the partnership has received a bonus or other amount in respect of a short-term life assurance policy issued after 7 December 1983 – see **14 Other Australian income** on page 54

- where the partnership has paid or credited unfranked dividends or interest to a non-resident of Australia or has received unfranked dividends or interest on behalf of a non-resident of Australia – see **appendix 1**
- reconstituted partnerships where the dissolution of the partnership was only technical and the partnership business carried on as per GSTR 2003/13 – see the details that must be supplied when lodging the partnership return under **Reconstituted partnerships** on the previous page.

If any of the above circumstances apply, attach separate pages, headed SCHEDULE OF ADDITIONAL INFORMATION, showing the full details, the partnership name and TFN, sign it and attach it to the partnership tax return. Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the tax return.

Partnerships and capital gains tax

A partnership does not own assets for CGT purposes. A partnership asset is owned by the partners in the proportion to which they have agreed. If a CGT event happens to a partnership during the income year, or the partnership received a share of a capital gain from a trust, each partner must include their share of the capital gain or capital loss on their own tax return. For more information about how a partner returns their share of a capital gain or capital loss, see the *Guide to capital gains tax 2009*.

TRUSTS



Appointment of public officer

If a trust carries on a business in Australia or derives income from property in Australia and there is no trustee who is an Australian resident, the trustee generally appoints a public officer. The public officer must be a natural person of at least 18 years of age residing in Australia and the Commissioner must be notified in writing of their name and address.

The trust does not need to appoint a public officer if the Australian income of the trust consists solely of dividends, interest and/or royalties subject to withholding tax, or the Commissioner has granted an exemption in writing.

If the trustee does not appoint a public officer they may be prosecuted. A fine of up to \$110 (1 penalty unit) may be imposed for each day that the trustee fails or neglects to meet the requirements.

The public officer is answerable for doing everything required to be done by the trustee under the ITAA 1936, the ITAA 1997 or the Regulations. If the public officer defaults on any of these duties, they are liable to the same penalties as the trustee.

Lodging a trust tax return

A notice advising which entities are required to lodge income tax returns is published annually in the *Federal Register of Legislative Instruments* and is available at www.frli.gov.au

Irrespective of the amount of income derived, a trust tax return is lodged by the trustees resident in Australia or by any one of them if required by the Commissioner.

If no trustee is resident in Australia, the trust tax return is lodged by the public officer of the trust or, if a public officer does not need to be appointed, by an agent for the trustees in Australia.

However, a trust tax return is not required if the trust was a subsidiary member of a consolidated group for the full income year or if the trust is a corporate unit trust or a public trading trust. In the latter two cases, the trusts are taxed as companies and are therefore required to lodge a *Company tax return 2009*. Refer below for further details.

For children's saving accounts, see *Taxation Ruling IT 2486 – Income tax: children's savings accounts*.

For charitable trusts, see the *Income tax guide for non-profit organisations* (NAT 7967).

Keep a copy of the trust tax return and related documents, as there may be a charge for obtaining a copy from the Tax Office.

The address for lodging tax returns is on page 131.

The following are the **ONLY** schedules that are sent with the trust tax return:

- *Capital allowances schedule 2009* (NAT 3424)
- *Capital gains tax (CGT) schedule 2009* (NAT 3423)
- *Family trust election, revocation or variation 2009* (NAT 2787)
- *Interposed entity election or revocation 2009* (NAT 2788)
- *Losses schedule 2009* (NAT 3425)
- *Non-individual PAYG payment summary schedule 2009* (NAT 3647)
- *Personal services income schedule 2009* (NAT 3421)
- *Schedule 25A 2009* (NAT 1125).

Some schedules, such as the thin capitalisation schedule, must be posted to a specific address.

Do **not** send other schedules or documents with your tax return unless instructed to attach them as 'other attachments'. Keep any other schedules or documents with the trust's tax records. Tax returns lodged without all the required schedules may not be considered to have been lodged in the approved form. Unless the trust tax return and all required schedules are lodged by the due date, a failure to lodge on time penalty may be applied.

Tax offsets

A beneficiary may be entitled to claim certain tax offsets, such as those for:

- a dependent spouse (without dependent child or student)
- medical expenses
- private health insurance
- senior Australians
- pensioners
- education tax refund
- national rental affordability scheme tax offset
- foreign income tax offset.

For more information, see *TaxPack 2009* (NAT 0976) or our website www.ato.gov.au

If a trustee is assessable on behalf of a beneficiary who is presently entitled but under a legal disability, the trustee may be entitled to tax offsets to which that beneficiary would be entitled. Include a statement showing the type and amounts of any claim for a tax offset, sign the statement and attach it to the trust tax return.

Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the tax return.

Private health insurance tax offset

If you are a trustee who is assessable on behalf of a beneficiary who is presently entitled but under a legal disability – see section 98 of the ITAA 1936 – and the beneficiary is entitled to a tax offset under the private health insurance rebate, you can claim the tax offset for this rebate up to the value of any tax payable. To do this, include a separate statement showing the details listed below, sign it and attach it to the trust tax return. Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the tax return. The details are:

- trust name
- trust TFN
- beneficiary's name
- beneficiary's TFN
- amount of tax offset claimed
- health insurer membership number
- health insurer identification (ID) code
- type of health cover provided.

If the value of the private health insurance tax offset exceeds the amount of tax payable, you cannot claim a refund of any of the excess. To claim these excess amounts, the beneficiary must lodge their own personal income tax return and make a claim for the full amount there.

Age-based percentage rebates apply to premiums paid for appropriate private health insurance cover provided on or after 1 April 2005. Details of the rebate levels are on the annual private health insurance statement issued by your health insurer.

For more information on the private health insurance tax offset, see *TaxPack 2009*.

Special cases

All trusts lodge a trust tax return except corporate unit trusts and public trading trusts, which are taxed as companies and are therefore required to lodge a *Company tax return 2009*. These entities are defined below and must apply for a company TFN.

The trust loss provisions of Schedule 2F to the ITAA 1936 apply to corporate unit trusts and public trading trusts (even though they are taxed as companies), except where the corporate unit trust or public trading trust is participating in the consolidation regime for taxing wholly owned groups as a single income tax entity. For more information about the trust loss provisions, see **appendix 8**. For detailed information about the treatment of losses under consolidation, visit the consolidation page on our website.

Corporate unit trusts

A trust is a corporate unit trust for an income year if:

- it qualifies as a public unit trust
- under an arrangement, a business or property previously carried on or owned by a company is transferred to the unit trust and the shareholders of the company are entitled to take up units in the unit trust, and
- the trust is either a resident unit trust or was a corporate unit trust in a previous income year.

A public unit trust for this purpose is a trust whose units are listed on a stock exchange or offered to the public or held by 50 or more persons. A unit trust is not a public unit trust if 20 or fewer persons hold 75% or more of the beneficial interest of the income or the property of the trust.

A unit trust is a resident unit trust for an income year if, at any time during the income year:

- either
 - any property of the unit trust was situated in Australia, or
 - the trustee of the unit trust carried on business in Australia, and
- either
 - the central management and control of the unit trust was in Australia, or
 - one or more persons who were residents held more than 50% of the beneficial interests in the income or the property of the unit trust.

Public trading trusts

A trust is a public trading trust if:

- the trust is a public unit trust
- the trust is a trading trust
- either
 - the trust is a resident unit trust – defined as above under corporate unit trust, or
 - the trust was a public trading trust in a previous income year, and
- the trust is not a corporate unit trust.

A public unit trust for this purpose is a trust any of whose units are listed on a stock exchange or offered to the public or whose units are held by 50 or more persons except where 20 or fewer persons hold or have the right to hold 75% or more of the beneficial interests in the income or property of the trust and the Commissioner does not consider it reasonable to treat the trust as a public unit trust.

In addition, a unit trust is a public unit trust if one or more entities exempt from tax, or complying superannuation funds, complying approved deposit funds (ADF), or pooled superannuation trusts (PST) hold or have the right to hold beneficial interests in the income or property of the trust, or are paid or credited with 20% or more of the moneys paid or credited by the trustee to the unit holders, or an arrangement exists whereby the two outcomes just outlined could have been obtained.

Broadly speaking, a trading trust for this purpose is a trust whose trustee:

- carries on a trading business, or
- controls, or is able to control, the carrying on of a trading business by another person.

A trading business for this purpose is a business that does not consist wholly of:

- investing in land for rent
- investing or trading in loans, securities, shares, units in a unit trust, futures contracts, forward contracts, interest rate swap contracts, currency swap contracts, forward exchange rate contracts, forward interest rate contracts, life assurance policies, or rights or options in any of these
- investing or trading in other financial instruments that arise under financial arrangements (other than certain excepted arrangements).

From the 2008–09 income year there is a 2% safe harbour allowance at the whole of trust level for non-trading income, and for investments in land there is a 25% safe harbour allowance for non-rental, non-trading income from those investments. However, the trustee of a unit trust may choose not to apply those safe harbours for the 2008–09 income year.

Annual investment income reporting

Managers of unit trusts that are investment bodies for the purposes of Part VA of the ITAA 1936 may be required under regulation 56 of the Income Tax Regulations 1936 (ITR 1936) to lodge an *Annual investment income report* if they made any distributions to unit holders during the year. The report requires details of distributions, including the amounts paid and the names of the payees. For more information, phone **1800 072 681**.

Payment arrangements

Paying your tax debt

Income tax debts must be paid by the due date.

You can make payments by one of the five methods explained on pages 131–2. For more information, phone **1800 815 886**.

If the trust tax return is lodged on time, any tax payable by the trustee is due on the later of:

- 21 days after the due date for lodgment of the tax return specified in the legislative instrument registered on the Federal Register of Legislative Instruments, or
- 21 days after receipt of the notice of assessment.

If the trust tax return is lodged late or not at all, any tax payable by the trustee is due 21 days after the due date for lodgment.

The general interest charge (GIC) accrues on outstanding amounts from the due date for payment. The rate used to calculate GIC is derived by adding 7 percentage points to the 90-day Bank Accepted Bill rate. The GIC rate is updated quarterly.

For more information on the GIC, phone the Business Infoline.

What if you cannot pay your tax debt by the due date?

If you cannot pay your tax debt by the due date, phone the Account Management Infoline (see the inside back cover) to avoid action being taken to recover the debt.

We expect you to organise your affairs to ensure that you can pay your debt on time. Nevertheless, we may allow you to pay your debt under a mutually agreed payment plan if you have genuine difficulty paying your debt on time but have the capacity to eventually pay the debt. The GIC will continue to accrue on any outstanding amounts of tax during any payment arrangement.

In some circumstances the trustee may need to provide details of the trust's financial position, including a statement of its assets and liabilities and details of income and expenditure. We will also want to know what steps the trustee has taken to obtain funds to pay its tax debt and the steps the trustee is taking to meet future tax debts on time.

SCHEDULES

- Complete only one copy of the appropriate schedule.
- Attach all completed schedules to the tax return unless otherwise directed. Refer to **Lodging a trust tax return** on page 15, for a list of schedules that need to be sent with the trust tax return. Returns lodged without all the required schedules may not be considered to have been lodged in the approved form. Unless all schedules are lodged by the due date, a failure to lodge on time penalty may be applied.
- When completing the schedules print neatly in BLOCK LETTERS with a black pen only.

CAPITAL ALLOWANCES SCHEDULE

You do not need to complete a *Capital allowances schedule 2009* if the partnership or trust is a small business entity using the simplified depreciation rules.

In other cases, complete and attach a capital allowances schedule if the partnership or trust has included an amount greater than:

- \$15,000 at **Expenses, K Depreciation expenses** item 5
- \$1,000 at item 49 **Deduction for project pool**, or
- \$75,000 at either item 45 **Intangible depreciating assets first deducted** or at item 46 **Other depreciating assets first deducted**.

NOTE: FORMER SMALL BUSINESS ENTITY TAXPAYERS

If you were previously a small business entity or are a small business entity for the 2008–09 income year but are not using the small business entity depreciation rules this year, and are claiming a deduction in respect of a former small business item at **Expenses, K Depreciation expenses** item 5 (for example, in relation to a continuing prior small business pool), you do not need to complete the schedule if the amount at the label relates entirely to former small business items. If the amount at the label relates to both former small business items and uniform capital allowance (UCA) items and the amount exceeds \$15,000, you will need to complete the schedule.

For more information, see the *Capital allowances schedule instructions 2009* (NAT 4089).

Worksheets 1 and 2 in the *Guide to depreciating assets 2009* (NAT 1996) will help you to complete the *Capital allowances schedule 2009*. Labels **G, H, I, J** and **K** on **worksheet 1** and labels **L, M, N, O, P** and **Q** on **worksheet 2** correspond to labels on the capital allowances schedule.

CAPITAL GAINS TAX (CGT) SCHEDULE

T

You do not need to complete a *Capital gains tax (CGT) schedule 2009* (CGT schedule) if the trust was a subsidiary member of a consolidated group at the end of the income year and has completed **Z2 Consolidated subsidiary member** item 2.

In other cases, complete a CGT schedule and attach it to the trust's tax return if:

- a CGT event occurs in relation to a forestry managed investment scheme (FMIS) interest that is held other than as an initial participant
- the trust's total current year capital gains for the income year are greater than \$10,000, or
- the trust's total current year capital losses for the income year are greater than \$10,000.

The *Guide to capital gains tax 2009* will help you complete the CGT schedule. It also includes:

- a capital gain or capital loss worksheet for calculating a capital gain or capital loss for each CGT event
- a CGT summary worksheet for calculating a net capital gain or net capital loss for the income year
- the CGT schedule.

LOSSES SCHEDULE

You need to complete a losses schedule and attach it to the trust's tax return if the trust:

- has a total of tax losses and net capital losses carried forward to the 2008–09 income year greater than \$100,000
- is a life insurance entity and has either complying superannuation class tax losses or a virtual PST net capital loss carried forward to the 2008–09 income year
- is a listed widely held trust that is required to satisfy the same business test in Subdivision 269–F of Schedule 2F to the ITAA 1936 – as required by section 266–125 of Schedule 2F – to be able to claim a deduction for a tax loss in the 2008–09 income year or to apply a tax loss in a later income year
- claims a deduction for pre-commencement foreign losses
- has pre-commencement foreign losses carried forward to later income years
- claims a deduction for prior year controlled foreign company (CFC) losses
- has current year CFC losses, or
- has CFC losses carried forward to later income years.

If you complete a losses schedule, transfer the totals of the amounts at part A of the losses schedule to the corresponding **U** and **V** at item 27 **Losses information** on the trust tax return. However, if you do not need to complete a losses schedule but the trust has tax losses or net capital losses available to be carried forward to later income years, complete the information required at **U** and **V** at item 27 of the trust tax return as appropriate. For more information, see the *Losses schedule instructions 2009* (NAT 4088).

If you need to complete a losses schedule under the above criteria, you may also need to complete a CGT schedule. For more information, see the *Guide to capital gains tax 2009*.

NOTE

The foreign tax credit provisions and the foreign loss quarantining provisions have been repealed with effect for a taxpayer's first income year starting on or after 1 July 2008. In particular, foreign tax credits have been replaced with a new income tax offset and the restrictions on claiming foreign losses no longer apply. The amendments apply in relation to the income years commencing on or after 1 July 2008. It will be necessary to consider the transitional provisions to work out how to treat any existing foreign losses and foreign tax credits.

For more information refer to the electronic publication *Changes to foreign loss quarantining and foreign tax credit calculation rules – Update October 2008 – Fact sheet* on our website.

NON-INDIVIDUAL PAYG PAYMENT SUMMARY SCHEDULE

PAYG withholding applies to several payments including:

- payments for a supply where no ABN is quoted and no exemptions for quoting applied to the supplier
- payments arising from investments where no TFN or ABN is quoted
- certain payments to foreign residents prescribed in the Regulations.

If the payer withheld an amount from a payment to the partnership or trust because the partnership or trust did not quote an ABN, the payer should have sent a *PAYG Payment summary – withholding where ABN not quoted* (NAT 3283) to the partnership or trust.

If the payer withheld an amount from a payment to the partnership or trust because of the operation of foreign resident withholding, the payer should have sent a PAYG withholding from foreign residents – payment summary to the partnership or trust.

A payer may issue a receipt, remittance advice or similar document in place of the *PAYG Payment summary – withholding where ABN not quoted* or PAYG withholding from foreign residents – payment summary. If the partnership or trust did not receive or has lost its copy of a payment summary, contact the payer responsible and request a signed photocopy of the payer's copy. Include details from each *PAYG payment summary – withholding where ABN not quoted*, PAYG withholding from foreign residents – payment summary and/or *Non-individual PAYG payment summary schedule 2009*.

Complete a *Non-individual PAYG payment summary schedule 2009* if amounts are reported at:

- **C** and/or **D** **Gross payments where ABN not quoted** item 5 **Business income and expenses**
- **B** **Gross payments subject to foreign resident withholding** item 5 **Business income and expenses**
- **T** **Tax withheld where ABN not quoted** item 6.
- **U** **Credit for tax withheld – foreign resident withholding** item 6.

NOTE

Income subject to foreign resident withholding that has been included in a distribution received from other partnerships and/or trusts must be shown at item 8. A *Non-individual PAYG payment summary schedule 2009* is not required for these distributions because they do not have an associated payment summary.

Print the partnership's or trust's TFN and name in the appropriate boxes at the top of the schedule.

From each *PAYG Payment summary – withholding where ABN not quoted* or PAYG withholding from foreign residents – payment summary, record on the schedule:

- payer's ABN (or withholding payer number)
- total tax withheld
- gross payment
- payer's name.

When you have entered details of all these payment summaries on the schedule, attach the schedule to the partnership or trust tax return.

Do **not** attach copies of any payment summary to the tax return – keep them with the partnership's or trust's copy of the tax return and keep a copy of the schedule with the partnership's or trust's tax records.

PERSONAL SERVICES INCOME SCHEDULE

There are special rules for the income tax treatment of certain personal services income (PSI) earned by contractors and consultants.

If the partnership or trust received an individual's PSI, complete item **30 Personal services income** on the partnership or trust tax return. Also complete a *Personal services income schedule 2009* (PSI schedule) and attach it to the tax return. For more information on the PSI rules, see the instructions that accompany the PSI schedule.

THIN CAPITALISATION SCHEDULE

You do **not** need to complete a *Thin capitalisation schedule 2009* (NAT 6458) if the partnership or trust was a subsidiary member of a consolidated group at any time during the income year and has completed **Z2 Consolidated subsidiary member** item 2.

In other cases, complete a *Thin capitalisation schedule 2009* if the thin capitalisation rules apply to the partnership or trust. For more information, see **appendix 3** and the *Guide to thin capitalisation*, available on our website.

Do not attach the completed schedule to the tax return – post it to:

Australian Taxation Office
PO Box 1365
ALBURY NSW 2640

COMPLETING THE TAX RETURN

PAGE 1 PARTNERSHIP TAX RETURN

ATTACHMENTS TO THE TAX RETURN

Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the partnership tax return if the partnership has included additional information. Attach these documents to the tax return.

TAX FILE NUMBER (TFN)

Print the TFN of the partnership in the boxes provided.

NAME OF PARTNERSHIP

The partnership name should be consistent from year to year, except in the year of a name change.

If the partnership name is legally changed, advise the Tax Office in writing at the time the change is made.

AUSTRALIAN BUSINESS NUMBER (ABN)

The ABN is a single, unique business identifier used for all dealings with the Australian Government. It is also available to state, territory and local government regulatory bodies. Identification for taxation law purposes is only one of the objects of the ABN.

Print the ABN of the partnership in the boxes provided if the partnership is registered in the Australian Business Register.

Follow the instructions on the partnership tax return for the following items:

- Previous name of the partnership
- Current postal address
- Postal address on previous tax return.

Note: C/- is the preferred format for 'care of'.

FULL NAME OF THE PARTNER TO WHOM NOTICES SHOULD BE SENT

Show the surname or family name and given names of the partner to whom notices should be sent. If the partner is a company, show the name and the ABN of the company.

If the partner is a trustee of a trust, show the name of the trust and the trustee. If the trustee is a company show the name and ABN of the company.

INTERPOSED ENTITY ELECTION STATUS

This item must be completed if any of the following apply:

- The partners have previously made one or more interposed entity elections specifying a day in any income years from 1994–95 to 2008–09 in accordance with section 272-85 of Schedule 2F to the ITAA 1936 and, if applicable, items 23 or 23A of Schedule 1 to the *Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998* (Trust Loss Act).

- The partners are making one or more interposed entity elections specifying a day in the 2004–05 or later income year in accordance with section 272-85 of Schedule 2F to the ITAA 1936.
- The partners are revoking, from a time in the 2008–09 income year, one or more previously made interposed entity elections in accordance with section 272-85 of Schedule 2F to the ITAA 1936.

Do not attach election forms for an interposed entity election made specifying an income year before the 2004–05 income year to the *Partnership tax return 2009*. Under section 272-85 of Schedule 2F to the ITAA 1936, a partner cannot make an interposed entity election specifying a year earlier than 2004–05 in the *Partnership tax return 2009*.

NOTE

Amendments to Schedule 2F to the ITAA 1936 in the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* may affect the information that you complete at this item. The amendments apply to income years starting on or after 1 July 2007.

- Changes to section 272-85 of Schedule 2F to the ITAA 1936 now allow an interposed entity election to be revoked in certain limited circumstances.
- The partners cannot revoke an interposed entity election unless the revocation is in respect of an income year that occurs during the period
 - starting at the later of
 - the beginning of the income year specified in the election, or
 - the beginning of the income year in which the entity became a member of the family group, and
 - finishing at the end of the fourth income year after the income year referred to in the above two dot points, or
 - starting on 1 July 2007 and finishing on 30 June 2009.
- The revocation must be made with the entity's return of income for the income year from which the revocation is to be effective.

For further details on these amendments refer to the fact sheet *Family trusts – details of the amendments to increase flexibility for family trusts* available on our website.

Instructions on how to complete the *Interposed entity election or revocation 2009* are on the form itself.

If you are not using the electronic lodgment service (ELS), and an *Interposed entity election or revocation 2009* is being lodged with your partnership's 2009 tax return, send your tax return and the *Interposed entity election or revocation 2009*, to the address on page 131.

If the partners have previously made one or more elections specifying a day in an income year before the 2007–08 income year, write the earliest income year specified in the box at this item unless the partners are making one or more elections specifying a day in the 2004–05 or later income year.

If the partners have previously made one or more elections specifying a day in an income year before the 2004–05 income year and took advantage of the one-off opportunity in *Law Administration Practice Statement PS LA 2004/1 (GA) – Lodgment opportunity for family trust and interposed entity elections* to specify an earlier year, write the earliest income year specified unless the partners are making one or more elections specifying a day in the 2004–05 or later income year.

If the partners are making one or more interposed entity elections specifying a day in the 2004–05 or later income year, write the latest income year specified in the box at this item, and complete an *Interposed entity election or revocation 2009* for each election specifying a day in the 2004–05 or later income year.

Revocation

An interposed entity election can only be revoked by the partners of a partnership that satisfy all the relevant conditions in section 272-85 of Schedule 2F to the ITAA 1936.

Print code **R** in the box at this item if the interposed entity election made by the partnership is being revoked from a time in the 2008–09 income year. An *Interposed entity election or revocation 2009* must be completed and lodged with the 2008–09 tax return of the partnership.

EXAMPLE 1

The partners have previously made an interposed entity election specifying a day in the 1994–95 income year and are not making another interposed entity election.

Write **1995** in the box at this item. The partners do not need to complete an *Interposed entity election or revocation 2009*.

EXAMPLE 2

The partners have previously made an interposed entity election specifying a day in the 1996–97 income year and want to make another interposed entity election specifying a day in the 2008–09 income year.

Write **2009** in the box at this item. The partners must provide details in an *Interposed entity election or revocation 2009* of the election they are making specifying a day in the 2008–09 income year. The completed form can be attached to their *Partnership tax return 2009*.

EXAMPLE 3

The partners have previously made interposed entity elections specifying a day in the 1997–98 and 2005–06 income years respectively.

Write **1998** in the box at this item. The partners write the earlier year as they are not making an interposed entity election specifying a day in the 2004–05 or later income year with their *Partnership tax return 2009*. The partners do not need to complete an *Interposed entity election or revocation 2009*.

EXAMPLE 4

The partners have not previously made an interposed entity election. They now want to make an interposed entity election specifying a day in the 2004–05 income year.

If the relevant conditions in section 272-85 of Schedule 2F to the ITAA 1936, that allow an earlier income year to be specified, are satisfied write **2005** in the box at this item. The partners must provide details in an *Interposed entity election or revocation 2009* of the election they are making specifying a day in the 2004–05 income year. The completed form can be attached to their *Partnership tax return 2009*.

EXAMPLE 5

The partners have not previously made an interposed entity election. They now want to make an interposed entity election specifying a day in the 2008–09 income year.

Write **2009** in the box at this item. The partners must provide details in an *Interposed entity election or revocation 2009* of the election they are making specifying a day in the 2008–09 income year. The completed form can be attached to their *Partnership tax return 2009*.

EXAMPLE 6

The partners have previously made an interposed entity election specifying a day in the 2002–03 income year.

The partners took advantage of the one-off opportunity in PS LA 2004/1 (GA) by lodging a declaration requesting that the election apply from the 1997–98 income year.

Write **1998** in the box at this item. The partners do not need to complete an *Interposed entity election or revocation 2009*.

EXAMPLE 7

The partners have previously made an interposed entity election specifying a day in the 2003–04 income year and meet the conditions to revoke their interposed entity election in the 2008–09 income year. The partnership has no other interposed entity elections in force.

Write **2004** in the box at this item and print **R** in the box at this item. The partners need to complete an *Interposed entity election or revocation 2009* and lodge this with their *Partnership tax return 2009*.

Family trust distribution tax

A consequence of a partnership making an interposed entity election is that under section 271-25 of Schedule 2F to the ITAA 1936 a special tax – family trust distribution tax (FTDT) – is payable at 46.5% on any conferral of present entitlement to, or distribution of, income or capital of the partnership to persons who are not members of the family group of the specified individual within the meaning of section 272-90 of that schedule.

A distribution of income or capital by a partnership is defined in sections 272-55 and 272-60 of Schedule 2F to the ITAA 1936.

NOTE: Effective from 1 July 2007 the definition of ‘family group’ was amended to include a former spouse, a former widow or widower and a former stepchild.

References to these terms are as follows:

- **former spouse** is a person who was a spouse of either the primary individual or a member of the primary individual's family before a breakdown in the marriage
- **former widow or widower** is a person who was a widow or widower of either the primary individual or a member of the primary individual's family, and who has a new spouse who is not a member of the primary individual's family
- **former stepchild** is a person who was a stepchild of either the primary individual or a member of the primary individual's family, before a breakdown in the marriage of the primary individual or the member of the primary individual's family.

Post the *Family trust distribution tax payment advice 2009*, available on our website, with your FTDT payment to the appropriate address on page 132. Make cheques or money orders payable to the Deputy Commissioner of Taxation and print ‘Not negotiable’ across the cheque. Tender all cheques in Australian currency. Do not send cash by post.

TFN OF FORMER PARTNERSHIP

If this is the first tax return of a new partnership after a reconstitution, show the TFN of the former partnership in the box provided. For reconstituted partnerships where the dissolution of the partnership was only technical and the partnership business carried on as per GSTR 2003/13, write the retained TFN in the box provided, even though it is common to both the former and the reconstituted partnership – see **Reconstituted partnerships** on page 13.

FINAL TAX RETURN

If the partnership does not expect to lodge further tax returns, print **FINAL** in the box at this item.

Attach a statement to the partnership tax return showing the:

- reason further tax returns will not be lodged
- manner of disposal of any assets of the partnership if not disclosed elsewhere on the tax return.

Print **YES** in the **Have you attached any ‘other attachments’?** box at the top of page 1 of the tax return.

If it is the final tax return because the partnership has been reconstituted, also include in the statement the names of the partners in the new partnership and the trading name, if any, of the new partnership.

! NOTE

For partnerships that are subsidiary members of a consolidated group, do not print **FINAL** if membership of the consolidated group is the only reason that it will not be required to lodge future tax returns.

PAGE 1 TRUST TAX RETURN

ATTACHMENTS TO THE TAX RETURN

Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the trust tax return if the trust has included additional information. Attach these documents to the tax return.

TAX FILE NUMBER (TFN)

Print the TFN of the trust in the boxes provided.

NAME OF TRUST

The trust name should be consistent from year to year, except in the year of a name change.

If the trust name is legally changed, send written advice of the change to the Tax Office at the time the change is made. Do **not** show particulars of trustees or administrators at this item.

AUSTRALIAN BUSINESS NUMBER (ABN)

The ABN is a single, unique business identifier used for all dealings with the Australian Government. It is also available to state, territory and local government regulatory bodies. Identification for taxation law purposes is only one of the objects of the ABN.

Print the ABN of the trust in the boxes provided if the trust is registered in the Australian Business Register.

Follow the instructions on the trust tax return for the following items:

- **Previous name of the trust**
- **Current postal address**
- **Postal address on previous tax return.**

FULL NAME OF THE TRUSTEE TO WHOM NOTICES SHOULD BE SENT

Show the surname or family name and given names of the trustee to whom notices should be sent. If the trustee is a company, show the name and ABN of the company.

If the trust comprises the property of a bankrupt and the estate is being administered by the Official Receiver, print **OFFICIAL TRUSTEE IN BANKRUPTCY** in the box provided for the company name. Leave the individual name box blank.

Daytime contact phone number

Print a phone number on which the trustee can be contacted during business hours.

FAMILY TRUST/INTERPOSED ENTITY ELECTION STATUS

This item must be completed if any of the following apply. The trustee of the trust:

- has previously made a family trust election specifying an income year from 1994–95 to 2007–08 in accordance with section 272–80 of Schedule 2F to the ITAA 1936 and, if applicable, items 22 or 22A of Schedule 1 to the Trust Loss Act, and that election has not been revoked in accordance with subsections 272–80(6) to (8) of Schedule 2F to the ITAA 1936 in an income year before the 2008–09 income year
- is making a family trust election specifying the 2004–05 or later income year in accordance with section 272–80 of Schedule 2F to the ITAA 1936
- has previously made one or more interposed entity elections specifying a day in any income year from 1994–95 to 2007–08 in accordance with section 272–85 of Schedule 2F to the ITAA 1936 and, if applicable, items 23 or 23A of Schedule 1 to the Trust Loss Act
- is making one or more interposed entity elections specifying a day in the 2004–05 or later income year in accordance with section 272–85 of Schedule 2F to the ITAA 1936
- is revoking from a time in the 2008–09 income year one or more previously made interposed entity elections in accordance with section 272–85 of Schedule 2F to the ITAA 1936
- is revoking from a time in the 2008–09 income year a previously made family trust election in accordance with section 272–80 of Schedule 2F to the ITAA 1936, or
- is varying the specified individual of a previously made family trust election in accordance with section 272–80 of Schedule 2F to the ITAA 1936.

Do not attach election forms for family trust and interposed entity elections made specifying an income year before the 2004–05 income year to the *Trust tax return 2009*. Under sections 272–80 and 272–85 of Schedule 2F to the ITAA 1936 a trustee cannot make a family trust election or an interposed entity election specifying a year earlier than 2004–05 in the *Trust tax return 2009*.

NOTE

Amendments to Schedule 2F to the ITAA 1936 in the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* may affect the information that you complete at these items.

Family trust elections

- Changes to section 272-80 of Schedule 2F to the ITAA 1936 allow a trustee to revoke a family trust election and vary the specified individual in a family trust election in certain limited circumstances.
- A trustee cannot vary the specified individual or revoke a family trust election unless the variation or revocation satisfies certain conditions and is in respect of an income year that occurs during the period:
 - starting at the beginning of the income year specified in the election and finishing at the end of the fourth income year after the income year specified in the election, or
 - starting on 1 July 2007 and finishing on 30 June 2009.

The variation or revocation must be made with the entity's return of income for the income year from which the variation or revocation is to be effective.

Interposed entity elections

- Changes to section 272-85 of Schedule 2F to the ITAA 1936 allow an interposed entity election to be revoked in certain limited circumstances.
- A trustee cannot revoke an interposed entity election unless the revocation is in respect of an income year that occurs during the period
 - starting at the later of:
 - the beginning of the income year specified in the election, or
 - the beginning of the income year in which the entity became a member of the family group, and
 - finishing at the end of the fourth income year after the income year referred to in the above two dot points, or
 - starting on 1 July 2007 and finishing on 30 June 2009.
- The revocation must be made with the entity's return of income for the income year from which the revocation is to be effective.

For further details on these amendments refer to the fact sheet *Family trusts – details of the amendments to increase flexibility for family trusts* available on our website.

Instructions on how to complete the *Family trust election, revocation or variation 2009* and *Interposed entity election or revocation 2009* are on the forms.

If the trust tax return is not lodged electronically using ELS and a *Family trust election, revocation or variation 2009* and/or *Interposed entity election or revocation 2009* are being lodged with the trust's 2009 tax return, send the documents, including the trust tax return, to:

Australian Taxation Office
GPO Box 9845
in your capital city

Family trust election status

If the trustees have previously made a family trust election specifying an income year before the 2008–09 income year, write the appropriate income year in the box at this item.

If the trustees have previously made a family trust election specifying an income year before the 2004–05 income year and took advantage of the one-off opportunity in PS LA 2004/1 (GA) to specify an earlier year, write the earlier income year specified.

If the trustees are making a family trust election specifying the 2004–05 or later income year, write the appropriate income year in the box at this item and complete a *Family trust election, revocation or variation 2009* specifying the 2004–05 or later income year.

If the trustees of the trust have not made or are not making a family trust election, do not complete this item.

Interposed entity election status

If the trustees have previously made one or more interposed entity elections specifying a day in an income year before the 2008–09 income year, write in the box at this item:

- the income year that has been specified in the interposed entity election made by the trustees (if only one interposed entity election has been made), or
- the earliest income year which has been specified in all of the interposed entity elections made by the trustees (if more than one interposed entity election has been made)

unless the trustees are making one or more interposed entity elections specifying a day in the 2004–05 or later income year. If so, write 2005 or the later income year in the box at this item.

If the trustees have previously made one or more elections specifying a day in an income year before the 2004–05 income year and took advantage of the one-off opportunity in *Law Administration Practice Statement PS LA 2004/1 (GA) Lodgment opportunity for family trust and interposed entity elections* to specify an earlier year, write the earliest income year specified, unless the trustees are making one or more elections specifying a day in the 2004–05 or later income year.

If the trustees are making one or more interposed entity elections specifying a day in the 2004–05 or later income year, write the latest income year specified in the box at this item and complete an *Interposed entity election or revocation 2009* for each interposed entity election specifying a day in the 2004–05 or later income year.

If the trustees of the trust have not made or are not making any interposed entity elections, do not complete this item.

Revoking a family trust election

A family trust election can only be revoked by a trust that satisfies the relevant conditions in section 272-80 of Schedule 2F to the ITAA 1936.

Print code **R** in the box at this item if the family trust election made by the trust is being revoked from a time in the 2008–09 income year. A *Family trust election, revocation or variation 2009* must be completed and lodged with the 2008–09 tax return of the trust.

Revoking an interposed entity election

An interposed entity election can only be revoked by a trust that satisfies the relevant conditions in section 272-85 of Schedule 2F to the ITAA 1936.

Print code **R** in the box at this item if the interposed entity election made by the trust is being revoked from a time in the 2008–09 income year. An *Interposed entity election or revocation 2009* must be completed and lodged with the 2008–09 tax return of the trust.

Varying the test individual of a family trust election

Providing the relevant conditions in section 272-80 of Schedule 2F to the ITAA 1936 are satisfied, a trust may in respect of an income year specified under the heading *Family trust elections* in the note box on the previous page, vary an election so that a different individual is specified as the individual whose family group is taken into account in relation to the election. A trust may only vary the specified individual of a family trust election once, except where doing so under subsection 272-80(5C) of Schedule 2F to the ITAA 1936 in relation to a relevant order, agreement or award of a kind mentioned in paragraph 126-5(1)(a) to (f) of ITAA 1997.

Print code **V** in the box at this item if the specified individual of a family trust election is being varied from a time in the 2008–09 income year. A *Family trust election, revocation or variation 2009* must be completed and lodged with the 2008–09 tax return of the trust.

EXAMPLE 8

The trustee has previously made a family trust election specifying the 1994–95 income year and an interposed entity election specifying a day in the 1994–95 income year.

Write **1995** in the box at this item for the family trust election status and write **1995** in the box at this item for the interposed entity election status. The trustee does not need to complete a *Family trust election, revocation or variation 2009* or an *Interposed entity election or revocation 2009*.

EXAMPLE 9

The trustee previously made a family trust election specifying the 1996–97 income year and an interposed entity election specifying a day in the 1997–98 income year. The trustee makes another interposed entity election specifying a day in the 2008–09 income year.

Write **1997** in the box at this item for the family trust election status and write **2009** in the box at this item for the interposed entity election status. The trustee provides details in an *Interposed entity election or revocation 2009* of the election the trust is making specifying a day in the 2008–09 income year. The completed form can be attached to the trust's 2009 tax return.

EXAMPLE 10

The trustee has not previously made a family trust election or an interposed entity election. The trustee decides to make a family trust election specifying the 2004–05 income year in accordance with section 272-80 of Schedule 2F to the ITAA 1936 and an interposed entity election specifying a day in the 2004–05 income year in accordance with section 272-85 of Schedule 2F to the ITAA 1936.

Write **2005** in the box at this item for the family trust election status and write **2005** in the box at this item for the interposed entity election status. The trustee provides details in a *Family trust election, revocation or variation 2009* of the election the trust is making specifying the 2004–05 income year and an *Interposed entity election or revocation 2009* of the election the trust is making specifying a day in the 2004–05 income year. The completed forms can be attached to the trust's 2009 tax return.

EXAMPLE 11

The trustee has not previously made a family trust election or an interposed entity election but wants to make a family trust election specifying the 2008–09 income year and an interposed entity election specifying a day in the 2008–09 income year.

Write **2009** in the box at this item for the family trust election status and write **2009** in the box at this item for the interposed entity election status. The trustee provides details in a *Family trust election, revocation or variation 2009* of the election the trust is making specifying the 2008–09 income year and an *Interposed entity election or revocation 2009* of the election the trust is making specifying a day in the 2008–09 income year. The completed forms can be attached to the trust's 2009 tax return.

EXAMPLE 12

The trustee previously made a family trust election specifying the 1995–96 income year and is revoking the family trust election from a day in the 2008–09 income year as it meets the relevant conditions in section 272-80 of Schedule 2F to the ITAA 1936 and has not made any interposed entity election.

Write **1996** in the box at this item for the family trust election status and print **R** in the box at this item as the trustee is revoking a family trust election. The *Family trust election, revocation or variation 2009* must be completed and lodged with the trust's 2009 tax return.

EXAMPLE 13

The trustee previously made a family trust election specifying the 1998–99 income year and an interposed entity election specifying the 2001–02 income year. The trustee is revoking the family trust election from a day in the 2008–09 income year as it meets the relevant conditions in section 272-80 of Schedule 2F to the ITAA 1936.

Write **1999** in the box at this item for the family trust election status and print **R** in the lower box at this item as the trustee is revoking a family trust election. Write **2002** in the box at this item for the interposed entity election status. The *Family trust election, revocation or variation 2009* must be completed and lodged with the trust's 2009 tax return.

EXAMPLE 14

The trustee previously made a family trust election specifying the 2000–01 income year.

The trustee took advantage of the one-off opportunity in PS LA 2004/1 (GA) by lodging a declaration requesting that the election apply from the 1995–96 income year.

Write **1996** in the box at this item for the family trust election status. The trustee does not need to complete a *Family trust election, revocation or variation 2009*.

EXAMPLE 15

The trustee previously made a family trust election specifying the 1998–99 income year and an interposed entity election specifying the 2001–02 income year. The trustee is varying the specified individual of the family trust election from the first day in the 2008–09 income year as it meets the relevant conditions in section 272-80(5C) of Schedule 2F to the ITAA 1936.

Write **1999** in the box at this item for the family trust election status. Write **2002** in the box at this item for the interposed entity election status. Also print **V** in the lower box at this item for the family trust election status as the trustee is varying the specified individual of a family trust election. The *Family trust election, revocation or variation 2009* must be completed and lodged with the trust's 2009 tax return.

Family trust distribution tax (FTDT)

A consequence of a trust making an interposed entity election or a family trust election is that under section 271-20 of Schedule 2F to the ITAA 1936 a special tax – FTDT – is payable at 46.5% by the trustee on any conferral of present entitlement to, or distribution of, income or capital of the trust to persons who are not members of the family group of the specified individual within the meaning of section 272-90 of Schedule 2F to the ITAA 1936. For this purpose, a distribution of income or capital by a trust has the meaning given in sections 272-45 and 272-60 of Schedule 2F to the ITAA 1936.

NOTE: Effective from 1 July 2007 the definition of 'family group' was amended to include a former spouse, a former widow or widower and a former stepchild.

References to these terms are as follows:

- **former spouse** is a person who was a spouse of either the primary individual or a member of the primary individual's family before a breakdown in the marriage
- **former widow or widower** is a person who was a widow or widower of either the primary individual or a member of the primary individual's family, and who has a new spouse who is not a member of the primary individual's family
- **former stepchild** is a person who was a stepchild of either the primary individual or a member of the primary individual's family, before a breakdown in the marriage of the primary individual or the member of the primary individual's family.

Post the *Family trust distribution tax payment advice 2009*, available on our website, with your FTDT payment to the appropriate address on page 132. Make cheques or money orders payable to the Deputy Commissioner of Taxation and print 'Not negotiable' across the cheque. Tender all cheques in Australian currency. Do not send cash by post.

TYPE OF TRUST

Print in the first box at this item the code from **table 1** that best describes the type of trust for which the trust tax return is being lodged. Descriptions of the types of trust are at **table 2**.

TABLE 1: Trust codes

Code	Type
D	Deceased estate
F	Fixed trust – other than a fixed unit trust or public unit trust described in U , P or Q
H	Hybrid trust
S	Discretionary trust – where the main source of income of the trust is from service and/or management activities
T	Discretionary trust – where the main source of income of the trust is from trading activities
I	Discretionary trust – where the main source of income of the trust is from investment activities
M	Cash management unit trust
U	Fixed unit trust – other than a public unit trust described in P or Q
P	Public unit trust (listed) – other than a cash management unit trust
Q	Public unit trust (unlisted) – other than a cash management unit trust

TABLE 2: Descriptions of trusts

Deceased estate

See **appendix 9**.

Fixed trust

A trust in which persons have fixed entitlements – as defined in section 272-5 of Schedule 2F to the ITAA 1936 – to all income and capital of the trust at all times during the income year.

Hybrid trust

A trust that is not a fixed trust but in which persons have fixed entitlements – as defined in section 272-5 of Schedule 2F to the ITAA 1936 – to income or capital of the trust during the income year.

Discretionary trust

A trust that is neither a fixed trust nor a hybrid trust and under which persons benefit from income or capital of the trust upon the exercise of discretion by persons, usually the trustee.

Fixed unit trust

A fixed trust in which interest in the income and capital of the trust are represented by units.

Public unit trust

A fixed unit trust that is a widely held unit trust – as defined in section 272-105 of Schedule 2F to the ITAA 1936 – at all times during the income year.

Public unit trust – listed

A public unit trust in which any of its units were listed for quotation on the official list of a stock exchange in Australia or elsewhere during the income year.

Public unit trust – unlisted

A public unit trust in which none of its units was listed for quotation on the official list of a stock exchange in Australia or elsewhere during the income year.

Charitable trust

If the trust is also an item 1.5 charitable trust in section 50-5 of the ITAA 1997, print **X** in the centre box at this item.

IS ANY TAX PAYABLE BY THE TRUSTEE?

The trustee is liable to pay tax on:

- net income to which no beneficiary is presently entitled – see **Is the beneficiary not presently entitled to a share of the income of a trust?** on page 78
- behalf of a beneficiary who is presently entitled to a share of the net income of the trust but is not a resident at the end of the income year – see **Non-resident beneficiaries – additional information** on pages 82–4
- behalf of a beneficiary who is presently entitled to a share of the net income of the trust but is under a legal disability – see **appendix 11**.

If the beneficiary is not under a legal disability and is a resident at the end of the income year, the beneficiary – not the trustee – is taxed on the share of net income to which the beneficiary is presently entitled.

If the trustee is liable to pay any tax, print **Y** for yes in the box at this item even if payments have been made in advance. Otherwise print **N** for no.

The beneficiary and/or trustee pays tax on the net income of the trust. Net income means the total assessable income calculated as if the trustee was a resident taxpayer, less all allowable deductions, except deductions for net farm management deposits (for more information, see **appendix 11**). In the case of any beneficiary with no beneficial interest in the trust corpus, past losses are required to be met out of corpus.

Request for a non-taxable advice

If the trustee is not assessed on income and a non-taxable advice is required, attach a request headed 'Request for a non-taxable advice' to the trust tax return. Include the trust name and TFN with the details, sign it and attach it to the tax return. Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the tax return.

FINAL TAX RETURN

If the trustee does not expect to lodge further tax returns, print **FINAL** in the box at this item.

Attach a statement headed 'Final trust tax return' to the trust tax return showing the:

- reason further tax returns will not be lodged
- manner of disposal of any assets of the trust if not disclosed elsewhere on the tax return.

Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the tax return.

NOTE

If the trust is a subsidiary member of a consolidated group, do not print **FINAL** if membership of the consolidated group is the only basis on which the trust will not be required to lodge future returns.

ELECTRONIC FUNDS TRANSFER (EFT)

Direct refund

We can deposit a tax refund directly into a bank, credit union or building society account using EFT.

Take care when completing EFT details as payment of any refund is made to the account specified.

If direct refund is not required

If the trustee does not want to use EFT, or wishes to cancel the existing EFT authority, print **N** for no at **Do you want to use EFT for your refund this year?**

To use direct refund

Print **Y** for yes at **Do you want to use EFT for your refund this year?**

Complete the following:

- Print the bank state branch (BSB) number in the **BSB number** box. This six-digit number identifies the financial institution. Do not include spaces, dashes or hyphens in the number.
- Print the account number in the **Account number** box. You cannot use an account number with more than nine characters. Do not include spaces in the account number.
- Print the account name, as shown on the account records, in the **Account name** box. Do not print the account type – for example savings, cheque or mortgage offset. Include spaces between each word and between initials in the account name. Joint accounts are acceptable. The account name must not exceed 32 characters.

Direct debit

The trustee can pay tax owing directly from their account using EFT. A trustee can provide separate account details for direct debit and direct refund.

To use direct debit

Trustees can arrange direct debit by using a tax agent who can lodge tax returns through ELS, or by completing a direct debit request form, available from the Tax Office or from www.ato.gov.au. Allow at least five working days for processing of the direct debit request form. Tax agents can transmit payment details up to three working days before the due date once the direct debit request has been processed. Phone **1800 802 308** for more information.

If the trustee used direct debit last year and the account details provided are correct, you do not need to make another request. The notice of assessment will display a message that the tax debt will be debited from the nominated account on the due date.

If the account details have changed, complete a direct debit request if you want to use direct debit this year.

A direct debit request remains in force until it is cancelled. Cancellations must be received three business days before the payment date.

NOTE

There is no provision for a direct debit election on the tax return. The direct debit request is available on our website. The direct debit request is also available as part of ELS software packages.

REMAINDER OF PARTNERSHIP TAX RETURN AND TRUST TAX RETURN

1 DESCRIPTION OF MAIN BUSINESS ACTIVITY

Describe as accurately as possible the business activity from which the partnership or trust derived the most gross income – for example, beef cattle breeding, vegetable growing, clothing manufacturing, confectionery wholesaling, domestic appliance retailing, investing in shares and stocks, investing in residential property. Do not use general descriptions such as farming, manufacturing, wholesaling, investing or trust.

Industry code

Show at **A** the appropriate industry code for the partnership's or trust's main business. The codes are listed in *Business industry codes 2009* (NAT 1827), available on our website.

Code the business activity as accurately as possible. The industry code is made up of five digits. For example, if the industry is 'dairy cattle farming', the code on the tax return is shown as **'01600'**.

An incorrect code may result in clients not receiving a necessary service or material from the Tax Office, or could lead to incorrect targeting of audits. The industry code provided is also used to publish industry benchmarks in *Taxation statistics*, available on our website.

The industry coding regime used by the Tax Office is a modified version of the *Australian and New Zealand Standard Industrial Classification* (ANZSIC), produced jointly by the Australian Bureau of Statistics (ABS) and Statistics New Zealand.

2 STATUS OF BUSINESS

Print **X** at **B1**, **B2**, or **B3** to show the appropriate description for the status of the business. If more than one selection applies, select the first applicable option. If none of the selections applies, leave **B1** to **B3** blank.

Consolidation status

Print **X** at **Z2** if the partnership or trust was a subsidiary member of a consolidated group at any time during the income year.

In this case the tax return is for the period during which the partnership or trust was not a subsidiary member of a consolidated group in the income year. If you print **X** at **Z2** the partnership or trust does not need to complete a thin capitalisation schedule, or schedule 25A. Also, the trust does not need to complete a capital gains tax (CGT) schedule.

4 DID YOU SELL ANY GOODS OR SERVICES USING THE INTERNET?

1 Print **Y** for yes at **Q** if, in deriving income, you used the internet to:

- receive orders for goods and/or services – for example, you received orders by email or a web page form rather than by conventional post, phone or facsimile
- receive payment for goods and/or services – for example, you received
 - credit card or charge card details by email or web page form rather than by conventional post, phone or facsimile
 - digital cash
- deliver goods and/or services – for example, you
 - used email, the world wide web (www) or file transfer protocol (FTP) to deliver digitised music, news articles or software rather than conventional post to deliver software on a disc
 - used email, in conjunction with a website, to give advice and received a payment in connection with this advice
 - advertised goods or services of other businesses for a fee on the internet
 - hosted websites
 - provided access to the internet.

Print **N** for no at **Q**, if you only used the internet to:

- advertise your goods or services
- give support to your customers
- buy your stock
- do your banking online.

INCOME EXCLUDING FOREIGN INCOME

5 BUSINESS INCOME AND EXPENSES

The amounts included in business income – **C** to **G** and **D** to **H** – and expenses – **P** to **N** – are accounting system amounts subject to two exceptions for small business entities:

- 1 small business entities choosing to use the simplified trading stock rules (see page 68) should use tax values for their closing stock in calculating their cost of sales shown at **E**
- 2 small business entities choosing to use the simplified depreciation rules (see page 35) should use tax values for their depreciation expenses at **K**.

For more information on small business entities, see **appendix 14**.

The accounting system amounts are shown or included on the business profit and loss statements and form the basis of the calculation of the business net profit or loss. Make adjustments to these accounting amounts for tax purposes at **Reconciliation items**.

GST is payable by entities that are registered, or required to be registered, for GST. If GST is payable on income, exclude the GST from the income derived. Exclude input tax credit entitlements on outgoing from deductions. Some GST adjustments – occurring, for example, where the percentage of business use of an asset changes – may be included in assessable income or allowed as deductions.

Only include at item **5**:

- business income amounts derived directly by the partnership or trust. Include distributions received from other partnerships and trusts at item **8 Partnerships and trusts**
- Australian-sourced income. Include foreign source income at
 - item **22 Attributed foreign income**
 - item **23 Other assessable foreign source income**.

Income and expenses are divided into three columns:

- primary production – showing relevant amounts of income and expenses from primary production
- non-primary production – showing relevant amounts of income and expenses from non-primary production
- totals – showing the total of the previous two columns.

NOTE

Income subject to foreign resident withholding is only shown at **B** in the **Non-primary production** column and the **Totals** column.

If the partnership or trust is eligible and is continuing to use the simplified tax system (STS) accounting method, see **Former STS taxpayers** below or **Small business entities** at **appendix 14**. Otherwise, see the information for **All partnerships and trusts** in the next column.

Former STS taxpayers

Continued use of the STS accounting method

Although the STS has now ceased, a transitional provision still allows for limited continued use of the STS accounting method.

A partnership or trust may continue using the STS accounting method if it:

- was a STS taxpayer continuously from the income year that started before 1 July 2005 and until the end of the 2006–07 income year
- used the STS accounting method for the 2005–06 to 2007–08 income years, and
- is a small business entity from the 2007–08 income year.

If the partnership or trust meets these requirements, it can continue using the STS accounting method until it chooses not to, or is no longer a small business entity. The STS accounting method recognises most income only when received. A partnership or trust that is eligible to continue using the STS accounting method can claim deductions for the following expenses only when they are paid:

- general deductions – for example, stock purchases, wages and rent of business premises
- tax-related expenses
- expenses for repairs.

If the partnership or trust is registered or required to be registered for GST, exclude GST payable from income amounts and input tax credit entitlements from deductions.

The STS accounting method does not apply to income or deductions that receive specific treatment in the income tax law – for example, net capital gains, dividends, bad debts and borrowing expenses.

In addition, if another provision of the income tax law apportions or alters the assessability or deductibility of a particular type of ordinary income or general deduction, the timing rule in the specific provision overrides the received or paid rule under the STS accounting method – for example, double wool clips or prepayment of a business expense for a period greater than 12 months. Because of these specific provisions you may need to make adjustments at **Reconciliation items** item 5.

For more information see **appendix 14**. For more information about the STS accounting method, visit our website or phone the Business Infoline.

Accordingly, base the amounts at **Reconciliation items** item 5 on the STS accounting method where applicable. If the partnership or trust is continuing to use the STS accounting method and its profit and loss statement does not reflect the STS accounting method rules, you may need to make additional adjustments at **Reconciliation items** to

show the correct amounts for **Net income or loss from business**. For more information about these adjustments, see **Reconciliation items** item 5 on page 40.

Ceasing use of the STS accounting method

If the partnership or trust has discontinued using the STS accounting method, business income and expenses that have not been accounted for (because they have not been received or paid) will be accounted for in this year. You may need to make additional reconciliation adjustments. See **appendix 14**.

INCOME

All partnerships and trusts

Gross payments where ABN not quoted

Show at **C** and/or **D** gross income received by the partnership or trust that was subject to withholding where an ABN was not quoted. This includes amounts of tax withheld.

If an amount is shown at **C** and/or **D**, complete a *Non-individual PAYG payment summary schedule 2009* and attach the completed schedule to the partnership or trust tax return. For instructions on completing this schedule see **Non-individual PAYG payment summary schedule** on page 19.

If **C** and/or **D** are completed, show the corresponding amount of tax withheld at **T Tax withheld where ABN not quoted** item 6.

Gross payments subject to foreign resident withholding

Show at **B** gross payments to the partnership or trust that were regulated foreign resident income. Gross payments include amounts withheld.

Regulated foreign resident income refers to payments which are prescribed in the *Taxation Administration Regulations 1976* as being subject to the foreign resident withholding measure.

Do not include payments where the amount was varied to nil under the foreign resident withholding measure because the income was not taxable under a double tax agreement.

If an amount is shown at **B**, complete a *Non-individual PAYG payment summary schedule 2009* and attach the completed schedule to the partnership or trust tax return. For instructions on completing this schedule, see **Non-individual PAYG payment summary schedule** on page 19.

NOTE

Show gross distributions of foreign resident regulated income from other partnerships and/or trusts at item 8. A *Non-individual PAYG payment summary schedule 2009* is not required for these distributions because they do not have an associated payment summary.

NOTE

You will not have any primary production amounts at this item. Leave **A** blank.

Assessable government industry payments

Generally, government grants, rebates, bounties and subsidies are assessable income in the hands of the recipient if they are received in, or in relation to, the carrying on of a business. This generally includes amounts of a capital nature. However, amounts relating to the starting or ceasing of a business may not be assessable.

Show at **E** and/or **F** the total amount of assessable government industry assistance. Examples are:

- bounties
- employee subsidies
- export incentives grants
- fuel grant under the energy grants credits scheme
- fuel tax credits
- industry restructure and adjustment payments
- product stewardship (oil) benefit
- producer rebate (wine equalisation tax).

If the amount at **E** and/or **F** includes fuel tax credit or a fuel grant under the energy grants credits scheme, fuel sales grant or a product stewardship (oil) benefit, print **D** in the CODE box at the right of the amount.

NOTE

Medical practices should show their Medicare payments at **H** **Other business income**, not at **F** **Assessable government industry payments**.

Other business income

Show at **G** and/or **H** other business income such as revenue arising from the sale of goods, services rendered, disposal of depreciated assets, work in progress amounts assessable under section 15–50 of the ITAA 1997 and royalties.

Do not include amounts that are shown at **C**, **D**, **B**, **E** and **F**.

If the amount at **G** and/or **H** is a loss, print **L** in the box at the right of the amount.

If you have included an amount for profit on the sale of depreciating assets at **G** and/or **H**, see **appendix 6**.

EXPENSES

Apart from two exceptions for small business entities mentioned below, the amounts shown at **Expenses**, **P** to **N** item **5** are amounts derived from the accounting system or financial statements of the partnership or trust. Make any adjustments to these amounts for tax purposes at **Reconciliation items**, **B** **Expense reconciliation adjustments**.

Small business entities using the simplified trading stock rules (see page 68) should use tax values for their closing stock in calculating their cost of sales shown at **E**.

Small business entities using the simplified depreciation rules (see page 35) should use tax values for their depreciation expenses at **K**.

If the partnership or trust is registered or required to be registered for GST, exclude input tax credit entitlements on outgoings from deductions.

If any expenses have been prepaid, the prepayment provisions may affect the timing of the deduction that can be claimed. Generally, the partnership or trust will need to apportion its deduction for prepaid business expenditure over the service period or 10 years, whichever is less. There are some exceptions to this under the 12-month rule for small business entities and the special rules relating to plantation forestry managed agreements. If the amounts shown under any expense label at item **5** differ from the amount allowable as deductions in the 2008–09 income year, make a reconciliation adjustment at **Reconciliation items**, **B** **Expense reconciliation adjustments**. For more information, see *Deductions for prepaid expenses 2009* (NAT 4170).

Foreign resident withholding expenses

Show at **P** all expenses directly relating to gaining the income shown at **B** **Gross payments subject to foreign resident withholding** item **5**. These amounts should not be shown at any other expenses label in item **5**. Do not include any expenses that were incurred in gaining income that is not assessable in Australia.

NOTE

You will not have any primary production amounts at this item.

Contractor, subcontractor and commission expenses

Show at **C** the expenditure incurred for labour and services provided under contract other than those in the nature of salaries and wages. For example:

- payments to self-employed people such as consultants and contractors
- commissions paid to people not receiving a retainer
- agency fees – for example, advertising
- service fees – for example, plant service
- management fees
- consultant fees.

Do not include the following at **C**:

- expenses for external labour which are incorporated into the amount shown at **Expenses**, **E** **Cost of sales**
- expenses for accounting or legal services. Show these at **Expenses**, **N** **All other expenses**.

Record keeping

Keep a record of the following:

- name and address of the payee
- nature of the services provided
- the amount paid.

Superannuation expenses

Show at **D** the employee superannuation expenses incurred for the income year.

Employers are entitled to a deduction for contributions made to a complying superannuation, provident, benefit or retirement fund, or retirement savings account (RSA), where the contribution is to provide superannuation benefits for employees or to provide benefits to the employee's dependants on the employee's death.

Superannuation benefits mean payments for superannuation member benefits or superannuation death benefits.

You can claim a deduction in the income year in which the contributions are made.

Contributions made to a non-complying fund:

- are not allowable as a deduction
- do not count towards superannuation guarantee obligations.

Under the superannuation guarantee legislation an employer needs to provide a minimum level of superannuation for employees or pay the superannuation guarantee charge (SGC) that is payable on the superannuation guarantee shortfall.

The SGC is not a superannuation contribution and is not tax deductible. Employers may not claim a tax deduction for any late contribution which they make to reduce the amount of SGC that they have to pay under the superannuation guarantee late payment measures.

Contributions paid by an employer for employees to a non-complying superannuation fund are fringe benefits and may be subject to tax under the *Fringe Benefits Tax Assessment Act 1986*.

There is no limit on the amount of contributions that can be claimed as a deduction by an employer contributing to a complying superannuation fund or RSA in respect of employees under the age of 75 years. However, the employee may be subject to excess concessional contributions tax at the rate of 31.5% on excess concessional contributions in a financial year if their concessional contributions exceed the concessional contributions cap of \$50,000. A transitional arrangement allows a higher cap of \$100,000 on concessional contributions for the 2007–08 to 2011–12 financial years for individuals aged 50 years or over on the last day of the financial year.

If an employee has reached the age of 75 years, there is a restriction on the deduction that can be claimed for an employer contribution to a complying superannuation fund or RSA. For contributions made after the 28th day of the month following the employee's 75th birthday, the deduction claimable is limited to the amount of the contribution required under an industry award, determination or notional agreement preserving state awards.

Cost of sales

Small business entities

If the partnership or trust is a small business entity using the simplified trading stock rules, it will need to know the value of its closing stock to calculate cost of sales. Small business entities only need to account for changes in the value of their trading stock in limited circumstances. These are explained on page 68. If the partnership or trust does not need to account for the change in value of closing stock, its closing stock will equal its opening stock value. If the partnership or trust does need to account for the change in value of closing stock, or chooses to do so, see **Closing stock item 40** on page 68 for information about how to calculate the closing stock value.

For further information on cost of sales, read on.

All partnerships and trusts

Show at **E** the cost of anything produced, manufactured, acquired or purchased for manufacture, sale or exchange in deriving the gross proceeds or earnings of the business. This includes freight inwards and may include some external labour costs – if these are recorded in the cost of sales account in the normal accounting procedure of the business.

If the cost of sales account is in credit at the end of the income year – that is, a negative expense – print **L** in the box at the right of the amount. Do not print brackets around the amount.

For more information on the circumstances in which packaging items held by a manufacturer, wholesaler or retailer are 'trading stock' as defined in section 70–10 of the *ITAA 1997*, see *Taxation Ruling TR 98/7 – Income tax: whether packaging items (ie containers, labels, etc) held by a manufacturer, wholesaler or retailer are trading stock*.

Bad debts

Show at **F** the bad debts expense incurred for the income year.

- Show recovery of bad debts at **G** and/or **H** **Other business income item 5**.

- You cannot claim a deduction for bad debts unless the debt which is bad has previously been included in assessable income, or is for money lent in the ordinary course of the business of the lending of money by a partnership or trust carrying on that business.

- **T** Under the trust loss provisions of Schedule 2F to the ITAA 1936, certain rules have to be satisfied by a trust before the trustee can deduct bad debts or debt and equity swap amounts. For more information about the trust loss provisions, see **appendix 8**.

- Do not include accounting provisions for doubtful debts at **F**. Show these at **Expenses, N All other expenses** then add them back at **Reconciliation items, B Expense reconciliation adjustments**. To calculate the amount of the expense reconciliation adjustment see **worksheet 1** on pages 86–7.
- Before a bad debt can be claimed, it must be bad and not merely doubtful. The deduction depends upon the facts in each case and, where applicable, the action taken for recovery. For more information, see *Taxation Ruling TR 92/18 – Income tax: bad debts*.

You can claim a deduction for partial debt write-offs where only part of a debt is bad and is written off. You can claim a deduction for the amount written off.

Deductions for bad debts may also be reduced by the commercial debt forgiveness provisions – see **appendix 4**.

You can also claim a deduction for losses incurred in debt and equity swaps for debt written off. You may be able to claim a deduction for a debt and equity swap by the partnership or trust, if the provisions of sections 63E to 63F of the ITAA 1936 are satisfied. Under these provisions a deduction may be allowable for the difference between the amount of the debt extinguished and the greater of the market value of the equity or the value at which the equity is recorded in the creditor's books at the time of issue. The market value of the equity is the price quoted on the stock exchange or, if the equity is not listed, the net asset backing of the equity.

If the partnership or trust is **not** in the business of lending money, the deduction is limited to the amount of the debt that has been included in assessable income.

Record keeping

If the partnership or trust writes off bad debts during the income year, keep a statement for all debtors in respect of which a write-off occurred showing:

- their name and address
- the amount of the debt
- the reason why the debt is regarded as bad
- the year that the amount was returned as income.

Lease expenses

Show at **G** the expenditure incurred through both finance and operating leases on leasing assets, such as motor vehicles, plant or other equipment. Do not include the cost of leasing real estate or capital expenditure incurred to terminate a lease or licence.

Although capital expenditure to terminate a lease or licence is not deductible in one year a five-year straight-line write-off may be allowable (see section 25–110 of the ITAA 1997) for certain capital expenditure incurred to terminate a lease or licence if the expenditure is incurred in the course of carrying on a business, or in connection with ceasing to carry on a business. See **worksheet 1** on pages 86–7.

Expenses incurred under a hire purchase or instalment sale agreement of goods, are not lease expenses. Such expenses are referred to in **appendix 6**.

In some circumstances lease expenses may be debt deductions for the purposes of the thin capitalisation rules. For information on thin capitalisation, see **appendix 3**.

In certain cases, an amount of tax – withholding tax – is withheld from amounts paid or payable under equipment leases to non-residents and overseas branches of residents, and must be remitted to the Tax Office. This is also subject to the operation of any relevant Double Tax Agreements (DTAs). If you have withheld amounts from payments to non-residents, you may need to lodge a *PAYG withholding from interest, dividend and royalty payments paid to non-residents – annual report* by 31 October 2009. For more information, phone the Business Infoline.

If an amount of lease expense is not allowable as a deduction, such as amounts disallowed under the thin capitalisation rules, add back the amount at **Reconciliation items, B Expense reconciliation adjustments**.

Record keeping

If a deduction is claimed for the cost of leasing depreciating assets, keep a record of the following:

- a description of the items leased
- full particulars of the lease expenses for each item, including motor vehicles, showing:
 - to whom the payments were made
 - the terms of the payments including details of any prepayments or deferred payments
 - if any assignment, defeasance or re-direction to pay the payments was entered into, full particulars of the arrangement including to whom the payments were made
- details of use other than for producing assessable income
- any documentation on or relating to the lease of the items.

Rent expenses

Show at **H** the expenditure incurred as a tenant for the rental of land and buildings used in the production of income.

Total interest expenses

Show at **I** the interest incurred on money borrowed within Australia and overseas to acquire income-producing assets, to finance business operations or to meet current business expenses.

Do not include interest expenses claimable against rental income. These expenses are shown at **G Interest deductions** item **9 Rent**.

NOTE

- An amount of tax – withholding tax – is generally withheld from interest paid or payable to non-residents and to overseas branches of residents. You must remit this to the Tax Office. If you have withheld amounts from payments to non-residents, you may need to lodge a *PAYG withholding from interest, dividend and royalty payments paid to non-residents – annual report* by 31 October 2009. For more information, phone the Business Infoline.
- The thin capitalisation rules may apply to reduce interest deductions. These rules place a limit on the amount of interest and other loan costs that can be deducted for Australian tax purposes. For more information, see **appendix 3**. Include the disallowed amount at **Reconciliation items, B Expense reconciliation adjustments**.
- **T** Distributions made by the issuer of a non-share equity interest are not deductible.
- You may not be able to claim interest in certain situations – for example, if it has been incurred for private or domestic purposes.

Show the amount of interest not allowable at **Reconciliation items, B Expense reconciliation adjustments**.

Record keeping

If interest is paid to non-residents or to overseas branches of residents, keep a record of the following:

- name and address of recipient
- amount of interest paid or credited
- amount of withholding tax withheld and the date on which it was remitted to the Tax Office.

Total royalty expenses

Show at **J** the royalty expenses for the income year. Include royalties paid to residents and non-residents.

An amount of tax – withholding tax – is generally withheld from royalties paid or payable to non-residents and to overseas branches of residents. You must remit this to the Tax Office. If you have withheld amounts from payments to non-residents, you may need to lodge a *PAYG withholding from interest, dividend and royalty payments paid to non-residents – annual report* by 31 October 2009. For more information, phone the Business Infoline.

Record keeping

Keep a record of the following:

- name and address of recipients
- amounts paid or credited
- nature of the benefit derived – for example, a copy of the royalty agreement
- details of tax withheld where applicable and the date on which it was remitted to the Tax Office.

For more information, see **appendix 2**.

Depreciation expenses

If the partnership or trust is an eligible small business entity and has chosen to use the simplified depreciation rules, see **Small business entities** on the next page. Otherwise see the information for **All other partnerships and trusts** below.

All other partnerships and trusts

Show at **K** the book depreciation expenses for depreciating assets other than for those assets allocated in a prior year to a general small business pool or a long-life small business pool. For assets allocated to such a pool, include at this label the amount of the pool deduction to be claimed for tax purposes. For information about small business entity depreciation deductions, see the next page.

The amount at **K** does not include:

- profit on the sale of a depreciating asset – shown at **G** and/or **H Other business income**
- loss on the sale of a depreciating asset – shown at **N All other expenses**.

The accounting or book depreciation may differ from the deduction for the decline in value of depreciating assets. Reconcile the deduction for the decline in value of depreciating assets with accounting depreciation at **Reconciliation items, B Expense reconciliation adjustments**.

For more information about deductions for the decline in value of depreciating assets, see **appendix 6**.

NOTE

If there is an amount greater than \$15,000 at **K** complete and attach a *Capital allowances schedule 2009* unless the partnership or trust:

- is eligible to be a small business entity using the simplified depreciation rules, or
- was previously a small business entity, and the amount at **K** relates entirely to depreciating assets that were allocated to a small business pool while it was a small business entity taxpayer.

For more information, see the *Capital allowances schedule instructions 2009*.

SIMPLIFYING TAX OBLIGATIONS FOR BUSINESS

Our *Law Administration Practice Statement PS LA 2003/8 – Taxation treatment of expenditure on low cost items for taxpayers carrying on a business* provides guidance on two straightforward methods which can be used by taxpayers carrying on a business to help determine whether expenditure incurred to acquire certain low-cost items is to be treated as revenue or capital.

Subject to certain qualifications, the two methods cover expenditure below a threshold and the use of statistical sampling to estimate total revenue expenditure on low-cost items. The threshold rule allows an immediate deduction for qualifying low-cost business items costing \$100 or less. The sampling rule allows taxpayers with a low-value pool to use statistical sampling to determine the proportion that is revenue expenditure.

A deduction for expenditure incurred on low-cost tangible assets calculated in accordance with this Practice Statement will be accepted by tax officers.

Small business entities

If the partnership or trust is an eligible small business entity and has chosen to use the simplified depreciation rules, show at **K** the total depreciation deductions being claimed by the partnership or trust under the simplified depreciation rules and the UCA rules. You do **not** need to complete a capital allowances schedule.

Small business entities can claim an immediate deduction for most depreciating assets costing less than \$1,000 (excluding input tax credit entitlements) and pool most of their other depreciating assets. There are two small business pools:

- a general small business pool for depreciating assets with an effective life of less than 25 years
- a long-life small business pool for depreciating assets with an effective life of 25 years or more.

A small business entity choosing to use these simplified depreciation rules must use both the immediate write-off and the pooling where applicable. You can't choose to use one and not the other.

Some depreciating assets are excluded from these simplified depreciation rules but you may be able to claim a deduction under the UCA rules. For example, horticultural plants including grapevines are excluded from the small business entity depreciation rules and are deducted under special UCA provisions – see **appendix 6**.

Assets that are leased out, or will be leased out, by a small business entity for more than 50% of the time on a depreciating asset lease are specifically excluded from the simplified depreciation rules. You can generally claim a deduction under the UCA provisions.

This exclusion does not apply to depreciating assets a taxpayer leases out under a hire purchase agreement or a short-term hire agreement.

For certain depreciating assets used by a small business entity in the course of carrying on a business of primary production, a taxpayer can choose whether to use these simplified depreciation provisions or specific UCA provisions. The specific UCA provisions are those applying to landcare operations, water facilities, electricity connections and telephone lines. For more information on these specific UCA provisions, see **appendix 6**.

As the small business entity depreciation rules apply only to depreciating assets, certain capital expenditure incurred by a small business entity which does not form part of the cost of a depreciating asset may be deducted under the UCA provisions for deducting capital expenditure.

This includes capital expenditure on certain business-related costs and amounts directly connected with a project. Do not include these amounts at **K**. Show the amount that can be claimed as a deduction at **Reconciliation items, B Expense reconciliation adjustments**. For more information, see **appendix 6**.

For more information about the small business entity depreciation rules, see *Concessions for small business entities – guide for small business operators* (NAT 71874), visit our website or phone the Business Infoline.

FORMER STS TAXPAYERS

Assets that were previously in an STS pool (a general STS pool or a long-life STS pool) continue to be subject to the pooling rules. To ensure continuity in the treatment of depreciating assets, an asset allocated to a general STS pool or long-life STS pool is treated as allocated to a general small business pool or long-life small business pool respectively. See **appendix 14**.

Calculating depreciation deductions for small business entities

Only use steps 1 to 5 to calculate the depreciation deductions if the partnership or trust is an eligible small business entity and has chosen to use these simplified depreciation rules.

If the profit and loss statement of the partnership or trust provides the amounts to complete **table 5** on page 38, write these amounts in the table. Otherwise, use steps 1 to 5 on pages 37–8 to calculate the depreciation deductions.

The amounts you write in the table must be tax and not accounting values.

TABLE 4: Explanation of terms

Depreciating asset is an asset with a limited effective life which declines in value over that life.

Decline in value (previously 'depreciation') is the value that an asset loses over its effective life.

Adjustable value of a depreciating asset is its cost (excluding input tax credit entitlements) less its decline in value since you first used it or installed it ready for use for any purpose, including a private purpose.

Taxable purpose includes the purpose of producing assessable income.

Taxable purpose proportion is the extent to which you use the asset for a taxable purpose, such as for the purpose of producing assessable income.

Termination value includes money received from the sale of an asset or insurance money received as the result of the loss or destruction of an asset. Exclude the GST component where the amount received is for a taxable supply.

Assessable balancing adjustment amount arises where the termination value of the depreciating asset is more than the adjustable value.

Deductible balancing adjustment amount arises where the termination value of the depreciating asset is less than the adjustable value.

Cost addition amounts include the costs of capital improvements to assets and costs reasonably attributable to disposing of or permanently ceasing to use an asset (this may include advertising and commission costs or the costs of demolishing the asset).

Step 1

Low-cost assets

For each depreciating asset:

- which the partnership or trust started to hold this income year and used (or installed ready for use) for a taxable purpose such as for producing assessable income
- whose cost at the end of this year is less than \$1,000 (excluding input tax credit entitlements)
- which qualifies for a deduction under the small business entity depreciation rules

work out the extent it is used for the purpose of producing assessable income (taxable purpose proportion). Calculate the deduction for each eligible asset as follows:

Asset's adjustable value × its taxable purpose proportion

The adjustable value of an asset, at the time it was first used (or installed ready for use) for a taxable purpose, will be its cost unless the asset was previously used (or installed ready for use) by the partnership or trust solely for private purposes. For example, for a tool set bought on 1 December at a cost of \$800 (excluding input tax credit entitlements) and used for producing assessable income from that date at an estimated 70% of the time, the immediate deduction would be $\$800 \times 70\% = \560 .

Add up these results and write the total at (a) in **table 5**.

Do **not** include in this calculation amounts for depreciating assets the partnership or trust started to hold prior to commencing to use the simplified depreciation rules and that cost less than \$1,000. Allocate these assets to a small business pool (see step 2).

Step 2

Small business pool deductions

To calculate the deductions for both the general and long-life small business pools you must first calculate the opening pool balance of each pool.

The opening pool balance of each small business pool is the closing pool balance for the previous income year except where an adjustment is made to reflect the changed business use of a pooled asset.

Allocate each depreciating asset the partnership or trust holds at the start of the income year to the appropriate pool according to the asset's effective life. Only include the taxable purpose proportion of the adjustable value of each depreciating asset. For example, for an asset with an adjustable value of \$10,000 which is used only 50% for an income-producing purpose, add only \$5,000 to the pool.

The partnership or trust can choose not to allocate an asset to the long-life small business pool if the asset was first used, or installed ready for use, for a taxable purpose before 1 July 2001. A partnership or trust making this choice would depreciate such assets under the normal UCA rules.

Calculate the opening pool balance for each small business pool by adding the value of all depreciating assets allocated to the relevant pool.

Calculate the deduction for each small business pool as follows:

General small business pool deduction = opening pool balance (\$) × 30%

Long-life small business pool deduction = opening pool balance (\$) × 5%

If necessary, make a reasonable apportionment for each small business pool deduction between primary production and non-primary production activities.

Write the result of the general small business pool deduction at (b) in **table 5**.

Write the result of the long-life small business pool deduction at (c) in **table 5**.

NOTE

If either pool balance (after taking into account additions and disposals but before calculating the deductions in steps 2 and 3) is less than \$1,000, calculate the deduction for the pool using step 5(b).

Step 3

Depreciating assets first used for a taxable purpose during the income year and cost addition amounts for assets already allocated to a pool

Calculate the deduction at half the relevant pool rate for:

- depreciating assets that the partnership or trust first used or installed ready for use for a taxable purpose during the year
- cost addition amounts for assets already allocated to a pool.

Calculate the deduction for the income year as follows:

- the taxable purpose proportion of the adjustable value of each depreciating asset first used for a taxable purpose this year \times 15% (general small business pool assets) or 2.5% (long-life pool assets), plus
- the taxable purpose proportion of cost addition amounts \times 15% (general pool assets) or 2.5% (long-life pool assets).

Write the total deduction for general small business pool assets at (d) in **table 5**.

Write the total deduction for long-life small business pool assets at (e) in **table 5**.

NOTE

If either pool balance (after taking into account additions and disposals but before calculating the deductions in steps 2 and 3) is less than \$1,000, calculate the deduction for these assets using step 5(b).

Step 4

Other depreciating assets

Calculate the deduction for the decline in value of all other depreciating assets that are not included in steps 1 to 3. For more information, see **appendix 6** and the *Guide to depreciating assets 2009*. Write the total deduction at (f) in **table 5**.

Step 5

Disposal of depreciating assets

(a) Low-cost assets

If the partnership or trust has disposed of a low-cost asset for which it has claimed an immediate deduction in step 1 this year or in the prior year, include the taxable purpose proportion of the termination value at **Reconciliation items** item 5. For example, for a low-cost asset used only 50% for an income-producing purpose which was sold for \$200 (excluding GST), only \$100 will be assessable and included as a reconciliation adjustment.

(b) Assets allocated to small business pools

If the partnership or trust disposes of depreciating assets that have been allocated to either the general or long-life small business pools, the taxable purpose proportion of the termination value is deducted from the closing pool balance. For example, for a pooled depreciating asset used only 50% for an income-producing purpose which was sold for \$3,000 (excluding GST), only \$1,500 will be deducted from the closing pool balance.

If the balance of a pool (after taking into account any additions and disposals but before calculating the deductions in steps 2 and 3) is less than \$1,000 but more than zero, the partnership or trust can claim an immediate deduction for this amount. Write this deduction against the appropriate pool at (b) or (c) in **table 5**.

If the closing pool balance is less than zero, the amount below zero is included in assessable income at **Reconciliation items** item 5. For more information about closing pool balances, see **Closing pool balance** on the next page.

If expenses are incurred in disposing of a depreciating asset these expenses may be taken into account in step 3.

(c) Other depreciating assets

See the *Guide to depreciating assets 2009* for information on how to calculate any balancing adjustment amounts on the disposal of other depreciating assets. Include balancing adjustment amounts at **Reconciliation items** item 5. See **worksheet 1** on pages 86–7.

TABLE 5: Depreciation deductions (small business entities only)

	Primary production (\$)	Non-primary production (\$)	Total (\$)
Low-cost assets			(a)
General pool			(b)
Long-life pool			(c)
General pool (1/2 rate)			(d)
Long-life pool (1/2 rate)			(e)
Other assets			(f)
Depreciation expenses Add up the amounts from (a) to (f).			(g)
Transfer the amount at (g) to K Depreciation expenses item 5.			
Transfer the amount at (a) to A Deduction for low cost assets item 59.			
Transfer the total of the amounts at (b) and (d) to B Deduction for general pool assets item 59.			
Transfer the total of the amounts at (c) and (e) to C Deduction for long-life pool assets item 59.			

Closing pool balance

The closing balance of each small business pool for an income year is:

- the opening pool balance (see step 2), *plus*
- the taxable purpose proportion of the adjustable value of assets that were first used, or installed ready for use, for a taxable purpose during the year (see step 3), *plus*
- the taxable purpose proportion of cost addition amounts for assets in the pool during the year (see step 3), *less*
- the taxable purpose proportion of the termination value of any pooled assets disposed of during the year (see step 5(b)), *less*
- the small business pool deduction (see step 2), *less*
- the deduction for assets first used by the taxpayer during the year (see step 3), *less*
- the deduction for cost addition amounts for pooled assets during the year (see step 3).

If the closing pool balance is less than zero see step 5(b).

The closing pool balance for this year becomes the opening pool balance for the next income year except if an adjustment is made to reflect the changed business use of a pooled asset.

The closing pool balance is needed to work out the pool deduction next year. Do not write the closing pool balance on the tax return.

! 5 YEAR RESTRICTION

If the partnership or trust is a small business entity and has chosen to use these simplified depreciation rules but then, in a later year, it chooses to stop using this concession, the partnership or trust **cannot** again choose to use the simplified depreciation rules until at least five years after the income year in which it chose to stop using the rules.

Motor vehicle expenses

Show at **L** motor vehicle running expenses only. These expenses include fuel, repairs, registration fees and insurance premiums. They do not include the following expenses shown at:

- Expenses, **G** Lease expenses
- Expenses, **I** Total interest expenses
- Expenses, **K** Depreciation expenses.

P Special substantiation and calculation rules for car expenses apply to partnerships in which at least one partner is an individual.

Under these rules, motor vehicle expenses can be claimed using one of four methods where the expense is for a motor car, station wagon, panel van, utility truck or other road vehicle designed to carry a load less than one tonne or fewer than nine passengers. For an explanation of these methods, see question **D1** in *TaxPack 2009*.

Print **N** in the CODE box if there is an amount shown at **L** and this amount relates to a:

- motorcycle
- taxi taken on hire
- road vehicle designed to carry a load of one tonne or more, or nine or more passengers.

In all other cases print in the CODE box the code from **table 6** that determines the method used to claim motor vehicle expenses applicable to the partnership.

If the partnership has more than one vehicle and uses a different method to claim motor vehicle expenses for each vehicle, use the code applicable to the largest claim.

TABLE 6: Motor vehicle expense claim methods

Code	Method used
S	Cents per km
T	12% of original value
O	1/3 of actual expenses
B	Logbook

Show any adjustment for tax purposes to the motor vehicle expenses included in the profit and loss statement at **Reconciliation items, B Expense reconciliation adjustments**. To calculate the amount of the expense reconciliation adjustment, see **worksheet 1** on pages 86–7.

For more information about keeping records, see *TaxPack 2009*.

Repairs and maintenance

Show at **M** the expenditure on repairs and maintenance of plant, machinery, implements and premises.

Write back any non-deductible expenditure, such as items of a capital nature or amounts relating to private use of an item shown at **M**, at **Reconciliation items, B Expense reconciliation adjustments**. The following information will help you work out whether you should make an expense reconciliation adjustment.

Repairs

As long as it is not expenditure of a capital nature, you may deduct the cost of repairs to property, plant, machinery or equipment used solely for producing assessable income or in carrying on a business for that purpose. You can only deduct expenditure on repairs to property used partially for business or income-producing purposes – for example, if the property is also used for private purposes, or in the production of exempt income – to an extent that is reasonable in the circumstances.

If items are newly acquired, including items acquired by way of a legacy or gift, the cost of remedying defects in existence at the time of acquisition is generally of a capital nature. Expenditure incurred in making alterations, additions or improvements is of a capital nature and is not deductible.

For more information on deductions for repairs, see *Taxation Ruling TR 97/23 – Income tax: deductions for repairs*.

Record keeping

To support any claim for repairs, keep source records showing full details of the nature and cost of repairs to each item.

All other expenses

Show at **N** the total of all other business expenses for the income year which have not already been included at **Expenses, P** to **M** – for example, travel expenses.

Note:

- Write back capital and other non-deductible items included at **N** at **Reconciliation items, B Expense reconciliation adjustments**.
- If you have included an amount for a loss on the sale of a depreciating asset at **N**, see **appendix 6**.
- Calculation of some deductions may be affected by the commercial debt forgiveness provisions, see **appendix 4**.
- Expenses listed here that are costs associated with borrowing and servicing debt may not be allowable under the thin capitalisation rules. For more information, see **appendix 3**. Include the non-deductible amount at **Reconciliation items, B Expense reconciliation adjustments**.

Total expenses

Show at **O** the total of all expense items shown at **Expenses, P** to **N**.

If there is a negative amount at **E Cost of sales** which exceeds the total of all other expenses, print **L** in the box at the right of the amount.

RECONCILIATION ITEMS

The reconciliation adjustments reconcile operating profit or loss as shown in the profit or loss account (the accounts) with the net income or loss for income tax purposes.

If the partnership or trust has included any amounts such as exempt income or non-deductible expenses in the accounts, or has not included amounts which are assessable income or expenditure that is deductible, work out the reconciliation adjustments.

Income reconciliation adjustments

Show at **A** the net income-related reconciliation adjustments. The amounts included here fall into two classes that either increase or reduce the net adjustment:

- **income add backs** – amounts not shown in the accounts, but which are assessable income, including timing adjustments. These items increase the total shown at **A**. Examples include
 - any excess of the tax value of closing stock over the tax value of opening stock (other than small business entities using the simplified trading stock rules) – see page 68
 - assessable balancing adjustment amounts on depreciating assets – see **appendix 6**
 - limited recourse debt amounts – see **appendix 6**
 - other assessable income not included in the accounts – small business entities should see page 101
- **income subtractions** – income shown in the accounts, which is not assessable income, including timing adjustments. These items reduce the total shown at **A**. Examples include
 - exempt income, including income exempt from Australian tax under a DTA
 - profit on the sale of a depreciating asset – see **appendix 6**
 - personal services income included in the assessable income of an individual (attributed amount) – see **30 Personal services income** on page 67
 - other income shown in the accounts which is not assessable for income tax purposes – former STS taxpayers should see **appendix 14**.

To calculate the net amount of the income reconciliation adjustments, see **worksheet 1** on pages 86–7.

If the **income subtractions** exceed the **income add backs**, the total is a negative amount. Print **L** in the box at the right of the amounts shown at **A**.

Expense reconciliation adjustments

Show at **B** the net expense-related reconciliation adjustments. The amounts included here fall into two classes that either increase or reduce the net adjustment:

- **expense add backs** – expenses shown in the accounts which are either not tax deductible or are only partly tax deductible, including timing adjustments. These items increase the total shown at **B**. Examples include
 - additions to provisions and reserves
 - capital expenditure
 - certain expenses relating to personal services income that are not deductible – see **30 Personal services income**
 - debt deductions denied by the thin capitalisation provisions – see **appendix 3**
 - depreciation expenses*
 - expenses relating to exempt income, including expenses relating to DTA exempt income
 - hire purchase payments – see **appendix 6**
 - income tax expense
 - loss on the sale of a depreciating asset – see **appendix 6**
 - luxury car lease payments – see **appendix 6**
 - part of prepaid expenses not deductible this year – see the next page
 - penalties and fines
 - other non-deductible expenses – former STS taxpayers should see the next column and **appendix 14**

* Only add back amounts of depreciation expenses if the partnership or trust is not a small business entity using the simplified depreciation rules. However, exclude any small business pool deductions shown at **K Depreciation expenses**.

- **expense subtractions** – amounts not shown as expenses in the accounts but which are tax deductible, including timing adjustments. These items reduce the total amount shown at **B**. Examples include
 - any excess of the tax value of opening stock over the tax value of closing stock – see the next page
 - any expenditure incurred under Subdivision 40-J of the ITAA 1997 to establish trees in carbon sink forests
 - deductible balancing adjustment amounts on depreciating assets – see **appendix 6**
 - deduction for decline in value of depreciating assets (other than partnerships or trusts using the small business entity depreciation rules) – see **appendix 6**
 - deduction for environmental protection expenses – see **appendix 6**
 - deduction for project pool – see **appendix 6**
- **T** deduction for electricity connections and telephone lines – see **appendix 6**
- hire purchase agreements – interest component – see **appendix 6**
- **T** deduction for landcare operations – see **appendix 6**
- luxury car leases – accrual amount – see **appendix 6**
- part of prepaid expenses deductible this year, but not shown in accounts – see the next page

- section 40–880 deduction – see **appendix 6**
- other deductible items – former STS taxpayers see below.

If the **expense subtractions** exceed the **expense add backs**, the total is a negative amount. Print **L** in the box at the right of the amount.

To calculate the net amount of the expense reconciliation adjustments, see **worksheet 1** on pages 86–7.

Specific reconciliation adjustments

Former STS taxpayers

If the partnership or trust is eligible and is continuing to use the STS accounting method, you may need to make additional adjustments (see **Former STS taxpayers** and **addendix 14**).

You will need to make adjustments at **Reconciliation items** item **5** if the partnership or trust is:

- using the STS accounting method, and the amounts shown at the income and expense sections of item **5** are not based on the STS accounting method, or
- changing from using the STS accounting method.

These adjustments are explained in more detail below. **Worksheet 1** on pages 86–7 will help with the calculations. See also **appendix 14**.

Trade debtors and creditors as at 30 June 2009

If the partnership or trust is eligible, has chosen to continue using the STS accounting method and has included at any income labels at item **5** amounts of ordinary income that have been derived but not received in 2008–09, the amounts not received are not assessable – for example, trade debtors as at 30 June 2009.

Show these amounts as income subtractions at **A Income reconciliation adjustments**.

If the partnership or trust is eligible, has chosen to continue using the STS accounting method and has included at any expense labels at item **5** amounts of general deductions, repairs or tax-related expenses that have been incurred but not paid in 2008–09, the amounts not paid are not deductible – for example, trade creditors as at 30 June 2009.

Show these amounts as expense add backs at **B Expense reconciliation adjustments**.

Adjustments when changing from the STS accounting method

If the partnership or trust has discontinued using the STS accounting method and changed to an accruals accounting method this year, read below.

If the partnership or trust has previously not included at any income label at item **5** amounts of ordinary income that were derived but not received while using the STS accounting method, these amounts are assessable this year – for example, trade debtors as at 30 June 2008.

Show these amounts as income add backs at **A**
Income reconciliation adjustments.

If the partnership or trust has previously not included at any expense labels at item **5** amounts of general deductions, repairs or tax-related expenses that were incurred but not paid while using the STS accounting method, these amounts are deductible this year – for example, trade creditors as at 30 June 2008.

Show these amounts as expense subtractions at **B**
Expense reconciliation adjustments, unless they are tax-related expenses. Include the deduction for tax-related expenses at item **18** on the tax return.

Disposal of depreciating assets

If the partnership or trust has disposed of depreciating assets during the income year, the following amounts (if any) are income add backs at **A** **Income reconciliation adjustments**:

- taxable purpose proportion of the termination value of low-cost assets disposed of for which an immediate deduction has been claimed
- if the closing pool balance of a small business pool is less than zero, the amount below zero
- assessable balancing adjustment amounts on the disposal of depreciating assets not subject to the small business entity depreciation rules.

Show any deductible balancing adjustment amounts on the disposal of depreciating assets not subject to the small business entity depreciation rules as expense subtractions at **B** **Expense reconciliation adjustments**.

Prepaid expenses (immediate deduction)

Small business entities are entitled to an immediate deduction for prepaid expenses if the expenditure is incurred for a period of service not exceeding 12 months and the eligible service period ends on or before the last day of the next year of income. If the eligible service period is more than 12 months, or ends after the next year of income, you must apportion the deduction for the expenditure over the eligible service period or 10 years, whichever is less. The immediate deduction under this 12-month rule does not apply to expenditure incurred under a tax shelter agreement except where it is for certain expenditure incurred under a plantation forestry managed agreement. For more information, see *Deductions for prepaid expenses 2009*. If expense labels include prepaid expenses that differ from the amounts allowable as deductions in the 2008–09 income year, make the reconciliation adjustment at **B** **Expense reconciliation adjustments**.

Prepaid expenses (apportionment)

The partnership's or trust's total deduction for prepaid expenses in the 2008–09 income year may comprise two components:

- the part of prepaid expenses incurred in the 2008–09 income year which relates to that income year, and
- that part of the 2007–08 or earlier income year's expenses that was not deductible in that income year, but which is deductible in the 2008–09 income year under the prepayment rules.

For more information, see *Deductions for prepaid expenses 2009*.

If expense labels include prepaid expenses that differ from the amounts allowable as deductions in the 2008–09 income year, make the reconciliation adjustment at

B **Expense reconciliation adjustments**.

Trading stock on hand (other than small business entities using the simplified trading stock rules)

Reconciliation adjustments will be required where the tax values of trading stock on hand have not been used in calculating the amount shown at **Expenses**, **E** **Cost of sales**. Any excess of the tax value of closing stock over the tax value of opening stock would be an income add back. Any excess of the tax value of opening stock over the tax value of closing stock would be an expense subtraction. If you have used accounting values for trading stock on hand in calculating the amount shown at **E** **Cost of sales**, you will need to take further reconciliation adjustments from those amounts.

For more information on the tax value of trading stock, see **38 Opening stock** and **40 Closing stock**.

Net income or loss from business

The net income or loss from business is total business income less total expenses incurred in producing that income, adjusted by any reconciliation items.

Show the net income or loss from business at:

- **Q** for primary production, and/or
- **R** for non-primary production.

If the amount at **Q** or **R** is a loss, print **L** in the box at the right of the amount.

Show at **S**:

- total business income, *minus*
- **O** **Total expenses**, *plus or minus*
- **A** **Income reconciliation adjustments** and **B** **Expense reconciliation adjustments**.

The sum of the net income or loss from business at:

- **Q** for primary production, and
- **R** for non-primary production

equals the amount shown at **S**.

If the amount at **S** is an overall loss, print **L** in the box at the right of the amount.

6 TAX WITHHELD

Tax withheld where ABN not quoted

Show at **T** the total of amounts withheld from income subject to withholding where an ABN was not quoted. This amount equals the sum of the amounts shown in the tax withheld boxes on the *Non-individual PAYG payment summary schedule 2009*. For instructions on completing the schedule, see **Non-individual PAYG payment summary schedule** on page 19.

Do not include any share of amounts withheld that is a distribution from another partnership or trust where an ABN was not quoted. Show this at **C Share of credit for tax withheld where ABN not quoted** item 8.

If an amount of tax withheld is shown at **T**, you must declare the corresponding gross income at **C** and/or **D Gross payments where ABN not quoted** item 5.

Credit for tax withheld – foreign resident withholding

Show at **U** the total amount of tax withheld from payments subject to foreign resident withholding. Do not include any share of foreign resident withholding credits distributed to the partnership or trust from other partnerships and/or trusts. Show these amounts at item 8.

If a credit is claimed at **U** for tax withheld under foreign resident withholding, the corresponding gross payment must be shown at **B Gross payments subject to foreign resident withholding** item 5.

7 CREDIT FOR INTEREST ON EARLY PAYMENTS – AMOUNT OF INTEREST

T

Show at **W** only the calculated interest amount of 50 cents or more for early payment. Do not show actual payments.

Early payment interest is payable only where the tax is actually paid more than 14 days before the due date for payment. Amounts which may attract early payment interest include payments of:

- income tax (including Medicare levy)
- a shortfall interest charge.

Amounts which are not directly paid but are reduced by the crediting or applying of an amount, do not attract early payment interest. These amounts include:

- credit for instalments payable under the PAYG instalment regime
- credit for amounts withheld from withholding payments under the PAYG withholding regime
- an overpayment of other income tax liabilities
- a running balance account (RBA) surplus, and
- any other credit entitlement arising under a taxation law.

Early payment interest is also not payable on:

- any component of the payment that exceeds the amount due
- an amount for any period during which that amount also attracts interest on overpayment.

For taxable trusts, early payment interest is calculated from the later of:

- the date of issue of the notice notifying the amount of tax or interest, or
- the date the early payment is made.

Interest is payable up to the due date for payment, but only on the amount of payment up to the value of the debt.

However, where an amount that is paid early is refunded before the day it becomes due and payable, interest does not accrue on the amount for any period after the day it is refunded.

Date of payment is the date:

- shown on the receipt from the Tax Office or post office, or
- payment is posted to the Tax Office plus three days, or
- shown on the taxpayer's bank statement where payment is made through direct debit – that is, EFT.

TABLE 7: Interest rates for early payments calculation

Period	Interest rate (p.a.)
Jul–Sep 2008	7.75%
Oct–Dec 2008	7.31%
Jan–Mar 2009	4.76%
Apr–Jun 2009	3.16%

If the early payment extends over two or more interest periods, calculate the interest for the number of days in each period.

Interest is calculated as follows:

$$\text{Interest} = \frac{\text{number of days}}{365^*} \times \text{amount of payment} \times \text{interest rate for period}$$

* 366 for a leap year

Keep a record of the amount of early payment interest claimed. This interest is assessable as income in the income year it is paid or credited against another liability.

8 PARTNERSHIPS AND TRUSTS

The partnership's or trust's income from another partnership includes income or a loss which the partnership or trust received, was entitled to receive or was entitled to deduct in respect of that other partnership.

The partnership's or trust's income from another trust includes income the partnership or trust received or was entitled to receive as a beneficiary under a will, settlement, deed of gift or other instrument of trust.

Distributions from another partnership or trust include the share of any:

- TFN amounts withheld from interest, dividends and unit trust distributions
- franking credits attached to franked dividends received indirectly from an Australian franking company
- amounts withheld where an ABN was not quoted.

Copy the details from any statements received from the other partnerships and trusts to **worksheet 2** on page 88. This is the partnership's or trust's record if the Tax Office needs more details later.

! NOTE

- Do not show any dividends or franking credits indirectly received that were attributable to distributions from a New Zealand franking company at this label. Show these amounts at item **23 Other assessable foreign source income**.
- Do not include any payments and loans received from trustees or amounts that are debts forgiven by trustees that are treated as dividends under Division 7A of the ITAA 1936. Show these amounts at **K Unfranked amount item 12 Dividends**.
- Do not include foreign income or a capital gain in income distributions from partnerships and trusts at item **8**. Show foreign income (excluding foreign capital gains) at:
 - item **22 Attributed foreign income**
 - item **23 Other assessable foreign source income**.
- **T** Show net capital gains (including foreign capital gains) at item **21 Capital gains**. Dividends received from listed investment companies are not distributions of net capital gains. For more information, see the *Guide to capital gains tax 2009*.
- **P** A partnership does not own assets for CGT purposes. A partnership asset is owned by the partners in the proportion to which they have agreed. If a CGT event happens in relation to a partnership during the year or to one of its CGT assets, or the partnership receives a share of a capital gain from a trust, any capital gain or capital loss is made by the partners individually. Each partner must calculate their capital gain or capital loss by reference to the partnership agreement, or partnership law if there is no agreement, and include it on their own tax return. For more information on how a partner returns their share of a capital gain or capital loss, see the *Guide to capital gains tax 2009*.

To the extent that family trust distribution tax (FTDT) has been paid on a conferral of present entitlement to, or distribution of, income or capital of another partnership or trust which would otherwise be assessable to the partnership or trust, the income or capital is excluded from the partnership's or trust's assessable income under section 271-105 of Schedule 2F to the ITAA 1936. You cannot claim a deduction for any losses or outgoings incurred in deriving an amount which is excluded from assessable income under section 271-105. You cannot claim a credit or tax offset for any franking credit attached to the non-assessable non-exempt portion of the dividend. For more information about the circumstances in which FTDT is payable, see pages 22 and 26.

If trustee beneficiary non-disclosure tax has been paid in respect of any part of a share of net income to which the partnership or trust is presently entitled or which has been distributed to the partnership or trust, that part of the share of net income is not included in the assessable income of the partnership or trust.

You cannot claim a deduction for any losses or outgoings incurred in deriving these amounts which are excluded from assessable income.

PRIMARY PRODUCTION

Distribution from partnerships

Show at **A** the amount of primary production income or loss distribution from other partnerships.

If this amount is a loss, print **L** in the box at the right of the amount.

Distribution from trusts

Show at **Z** the amount of primary production income distribution from other trusts. Include income to which the partnership or trust became presently entitled in the income year but has not yet received. If this amount is a loss, print **L** in the box at the right of the amount. Show a loss at **Z** only if it is a component of an overall distribution of net income from the same trust.

If this amount is not a loss, in the box at the right of **Z** print the code from **Table 1 Trust codes** on page 27 that best describes the type of trust from which the distribution is made. If this amount is from more than one type of trust, print the code that represents the trust with the greatest amount of distribution.

Deductions relating to distribution in **A** and **Z**

Show at **S** the partnership's or trust's deductions for its own expenses relating to primary production distributions from other partnerships or trusts.

If you have prepaid any expenses, the amount that can be claimed at **S** may be affected by the prepayment provisions. For more information, see *Deductions for prepaid expenses 2009*.

Expenses listed here that are costs associated with borrowing and servicing debt may not be allowable deductions under the thin capitalisation rules. For more information, see **appendix 3**. The disallowed amount reduces the amount that would otherwise be included at **S**.

Net primary production distributions

Show at this label the net result of partnership and/or trust distributions of primary production income.

Write the total amount in the box at **Net primary production distribution**. If this amount is a loss, print **L** in the box at the right of the amount.

NON-PRIMARY PRODUCTION

Distribution from partnerships, less foreign income

Show at **B** the amount of non-primary production income or loss distributions from other partnerships. Include any share of credit for tax withheld from foreign resident withholding that is attached to the distribution (you also include the share of credit at **U Share of credit for tax withheld from foreign resident withholding** item 8).

If the amount at **B** is a loss, print **L** in the box at the right of the amount.

If the distribution includes franked dividends from a franking entity, check the advice detailing the distribution to ensure that the amounts to be included at this label represent both the partnership's or trust's share of the franked dividend and its share of the franking credit attached to the franked dividend. The franking credit is also included at **D Share of franking credit from franked dividends** item 8.

Do not show any dividends or franking credits indirectly received that were attributable to distributions from a New Zealand franking company at this label. If the partnership or trust received dividends or franking credits indirectly from a New Zealand franking company, see item **23 Other assessable foreign source income**.

NOTE

If the partnership or trust received a distribution from another partnership and that other partnership advised that it claimed a deduction in respect of a listed investment company (LIC) capital gain amount, the partnership or trust is required to include its share of the deduction allowed to the other partnership at item **14 Other Australian income**.

Distribution from trusts, less net capital gain and foreign income

Show at **R** the amount of non-primary production income distributions from other trusts. Include any share of credit for tax withheld from foreign resident withholding that is attached to the distribution. (You also include the share of credit at **U Share of credit for tax withheld from foreign resident withholding** item 8.)

Trusts only

T

Include at **R** any share of credit for tax withheld from managed investment trust fund payments that is attached to the distribution (you also include the share of credit at **V** **Share of credit for tax withheld from managed investment trust fund payments** item 8).

If the distribution includes franked dividends from a franking entity, check the advice detailing the distribution to ensure that the amounts to be included at this label represent both the partnership's or trust's share of the franked dividend and its share of the franking credit attached to the franked dividend. The franking credit is also included at **D** **Share of franking credit from franked dividends** item 8.

Do not show any dividends or franking credits indirectly received which were attributable to distributions from a New Zealand franking company at this label. If the partnership or trust received dividends or franking credits indirectly from a New Zealand franking company, see item **23 Other assessable foreign source income**.

Include income to which the partnership or trust became presently entitled in the income year but has not yet received. If this amount is a loss, print **L** in the box at the right of the amount. Show a loss at **R** only if the amount is a component of an overall distribution of net income from the same trust.

If this amount is not a loss, in the box at the right of **R** print the code from **table 1** on page 27 that best describes the type of trust from which the distribution is made. If this amount is from more than one type of trust, print the code that represents the trust with the greatest amount of distribution.

NOTE

If the partnership or trust received a distribution from another trust and that other trust advised that it claimed a deduction in respect of a LIC capital gain amount, the partnership or trust is required to include its share of the deduction allowed to the other trust at item **14 Other Australian income**.

Deductions relating to distribution in **B** and **R**

Show at **T** the partnership's or trust's deductions for its own expenses for non-primary production distributions from other partnerships or trusts. If any expenses have been prepaid, the amount that can be claimed at **T** may be affected by the prepayment provisions. For more information, see *Deductions for prepaid expenses 2009*.

Expenses listed here that are costs associated with borrowing and servicing debt may not be allowable deductions under the thin capitalisation rules. For more information, see **appendix 3**. The disallowed amount reduces the amount that would otherwise go at **T**.

If FTDT has been paid on the income or capital of another partnership or trust that is distributed to you, that income or capital is not included in your assessable income. Do not show this at **A**, **Z**, **B** or **R**. You cannot claim a deduction for any losses or outgoings incurred in deriving an amount which is excluded from assessable income under section 271-105 of Schedule 2F to the ITAA 1936 at **S** or **T**. For more information about the circumstances in which FTDT is payable see page 22 for partnerships and page 26 for trusts.

If trustee beneficiary non-disclosure tax has been paid in respect of any part of a share of net income to which the partnership or trust is presently entitled or which has been distributed to the partnership or trust, you do not need to include that part of the share of net income in your assessable income or show it at **A**, **Z**, **B** or **R**. You cannot claim any losses or outgoings incurred in deriving an amount which is excluded from assessable income at **S** or **T**.

Net non-primary production distribution

Show at this label the net result of partnership and/or trust distributions of non-primary production income.

Write the total amount in the box at **Net non-primary production distribution**. If this amount is a loss, print **L** in the box at the right of the amount.

SHARE OF CREDITS FROM INCOME

Share of credit for tax withheld where ABN not quoted

If the income shown at **A**, **Z**, **B** or **R** includes any share of amounts withheld where an ABN was not quoted, show the share of that credit at **C**.

Share of franking credit from franked dividends

Show at **D** the partnership's or trust's share of any franking credits from a franking entity received through another partnership or trust.

Show franking credits received directly from a paying franking entity at **M** **Franking credit** item 12.

Do not show franking credits relating to a dividend received through another partnership or trust if any of the following apply:

- They were attributable to a distribution from a New Zealand franking company. If the partnership or trust received franking credits indirectly from a New Zealand franking company, see item **23 Other assessable foreign source income**.
- The holding period rule and related payments rule were not satisfied in relation to the dividend. For more information, see **appendix 1**.

- FTDT has been paid on the dividend paid or credited by a company which has made an interposed entity election. The dividend is excluded from assessable income under section 271-105 of Schedule 2F to the ITAA 1936. A franking credit or tax offset cannot be claimed for any franking credit attached to that dividend. For more information about when FTDT is payable, see pages 22 and 26.
- Trustee beneficiary non-disclosure tax has been paid in respect of the dividend. A franking credit or tax offset cannot be claimed for any franking credit attached to that dividend.

Share of credit for TFN amounts withheld from interest, dividends and unit trust distributions

Unless the partnership or trust claimed an exemption or lodged a TFN, the investment body may withhold amounts from interest, dividends and unit trust distributions. These are called 'TFN amounts withheld'. The current rate is 46.5% of the payment made.

Show at **E** the share of the net amount of TFN amounts withheld on interest, dividends and unit trust distributions relating to a distribution from another partnership or trust. Credits for TFN amounts withheld are allowed in the assessments of the partners, beneficiaries or trustees.

Share of credit for tax withheld from foreign resident withholding

Amounts may be withheld from some payments to specific recipients due to the operation of the foreign resident withholding measure. These payments relate to entertainment or sports activities, construction and related activities and casino gaming junket activities.

Show at **U** the partnership's or trust's share of any foreign resident withholding credits received from other partnerships and/or trusts. Ensure that this amount is included in the gross distribution amount shown at item 8, either at **B Distribution from partnerships, less foreign income** or **R Distribution from trusts, less net capital gain and foreign income**.

T Share of credit for tax withheld from managed investment trust fund payments

Amounts may have been withheld from payments from managed investment trusts and certain intermediaries due to the operation of the previous non-final withholding measure.

Show at **V** the trust's share of any non-final withholding credits received.

Ensure that this amount is also included in the gross distribution amount shown at item 8, either at **B Distribution from partnerships, less foreign income**, or **R Distribution from trusts, less net capital gain and foreign income**.

9 RENT

Former STS taxpayers

If the partnership or trust is eligible and has chosen to continue using the STS accounting method, base the gross rent at **F**, interest deductions at **G**, and general deductions and repairs included at **H** on the STS accounting method. For more information, see **appendix 14**.

! SMALL BUSINESS ENTITIES

Depreciating assets used in rental properties are generally excluded from the small business entity depreciation rules on the basis that the assets are part of property that is subject to a depreciating asset lease. For more information, see our publication *Concessions for small business entities – Guide for small business operators* (NAT 71874).

! NOTE

If the sole reason that you derived income jointly (or in common) with another person was that you were a part owner of a property that was available for rent, but you were not in a partnership carrying on a business of renting out properties, do not show any income or deductions from that rental property **at this item** – show your share of the income or deductions at item **21 Rent** of your *Tax return for individuals (supplementary section) 2009* or the relevant items of the company, trust or fund tax return or the self managed superannuation fund annual return.

To determine whether you are carrying on a business, see *Taxation Ruling TR 97/11 – Income tax: am I carrying on a business of primary production?*

Gross rent

Show at **F** the gross amount of rental income. This item cannot be a loss.

Rental income includes booking or letting fees, bond moneys if the partnership or trust becomes entitled to retain them, any insurance payouts that compensate for lost or forgone rent and reimbursements from tenants of deductible expenses incurred.

If the partnership or trust is registered for GST and GST is payable in relation to rental income, exclude the GST from gross rent at **F**.

Show rent from foreign sources at item **23 Other assessable foreign source income**.

NOTE

Lease premium received from a CGT event

P A capital gain or a capital loss made from the receipt of a lease premium is shown on each partner's own tax return.

T A capital gain or a capital loss made from the receipt of a lease premium is shown at item **21 Capital gains**.

For more information about CGT events involving leases, see the *Guide to capital gains tax 2009*.

Interest deductions

If borrowed monies are used to finance a property investment, interest paid on the borrowing generally is deductible.

However, the thin capitalisation rules may apply to reduce interest deductions. These rules place a limit on the amount of interest and other borrowing costs that can be deducted for Australian tax purposes. For more information, see **appendix 3**. The disallowed amount reduces the amount that would otherwise be included at **G**.

Show at **G** the total deductible amount of interest expenses incurred in earning rental income.

Capital works deductions

Show at **X** the total capital works deductions amount for rental buildings only. For information on capital works deductions, see **appendix 5**.

Other rental deductions

Show at **H** the total of other deductible expenses incurred in earning rental income.

If the partnership or trust is registered for GST and GST is payable in relation to rental income, exclude any input tax credit entitlements that arise in relation to expenses from the amount shown at **H**.

Expenses listed here that are costs associated with borrowing and servicing debt may not be allowable deductions under the thin capitalisation rules. For more information, see **appendix 3**. The disallowed amount reduces the amount that would otherwise go at **H**.

Deductions for the decline in value of depreciating assets used to earn rental income are generally shown at **H**. However, if the partnership or trust has allocated some of these assets to a low-value pool, you may need to show deductions at item **18 Other deductions**. For more information, see **appendix 6**.

Net rent

Show at this label the net amount of any rent. If this amount is a loss, print **L** in the box at the right of the amount.

For more information, see *Rental properties 2009* (NAT 1729).

NOTE

Tax agents who lodge partnership or trust tax returns through ELS must complete the *Partnerships and trusts rental property schedule 2009* if item **9 Rent** is completed. You do not have to complete the schedule if you are lodging a paper version of the partnership or trust tax return.

10 FORESTRY MANAGED INVESTMENT SCHEME INCOME

DEFINITIONS

A partnership or trust is an **initial participant** in an FMIS if:

- it obtained its forestry interest in the FMIS from the forestry manager of the scheme, and
- its payment to obtain the forestry interest in an FMIS results in the establishment of trees.

A partnership or trust is a **subsequent participant** if it is not an initial participant.

The **forestry manager** of an FMIS is the entity that manages, arranges or promotes the FMIS.

A **forestry interest** in an FMIS is a right to benefits produced by the FMIS (whether the right is actual, prospective or contingent, and whether it is enforceable or not).

The amount of the partnership or trust's **total forestry scheme deductions** is the total of all the amounts that it can deduct or has deducted for each income year that it held its forestry interest. See **17 Forestry managed investment scheme deduction** on page 56 for further information on amounts that you can deduct.

The amount of the partnership or trust's **incidental forestry scheme receipts** is the total of all the amounts that it has received from the FMIS in each income year that it held its forestry interest, other than amounts received because of a CGT event, that is, a sale or a harvest.

Write at **Q** item **10** the total income from the following activities for each FMIS in which the partnership or trust holds a forestry interest.

For an initial participant in an FMIS

Thinning receipts

If the partnership or trust received thinning proceeds from its forestry interest, include the actual amount received at **Q**.

Sale and harvest receipts – forestry interest no longer held

If the partnership or trust ceased holding its forestry interest as a result of a CGT event (because it sold its interest or it received harvest proceeds), include the market value of the forestry interest at the time of the CGT event at **Q**.

Sale and harvest receipts – forestry interest still held

If a CGT event happened and the partnership or trust still held its forestry interest (because it sold part of its interest or there was a partial harvest), include the amount by which the market value of the forestry interest was reduced at **Q**.

For a subsequent participant in an FMIS

Thinning receipts

If the partnership or trust received thinning proceeds from its forestry interest, include the actual amount received at **Q**.

Sale and harvest receipts – forestry interest no longer held

If the partnership or trust ceased holding its forestry interest as a result of a CGT event (because it sold its interest or it received harvest proceeds), include at **Q** the lesser of the following two amounts:

- the market value of the forestry interest at the time of the CGT event, or
- the amount (if any) by which the total forestry scheme deductions exceeded the incidental forestry scheme receipts.

Sale and harvest receipts – forestry interest still held

If a CGT event happened and the partnership or trust still held its forestry interest (because it sold part of its interest or there was a partial harvest), work out the following two amounts:

- the market value of the forestry interest at the time of the CGT event
- the amount (if any) by which the total forestry scheme deductions exceeded the incidental forestry scheme receipts.

Use the lesser of the two amounts above in the following formula:

$$\begin{array}{rcl} \text{amount worked} & & \text{the decrease (if any) in the market} \\ \text{out above} & \times & \text{value of the forestry interest} \\ & & \text{(as a result of the CGT event)} \\ & & \hline & & \text{the market value of the forestry} \\ & & \text{interest just before the CGT event} \end{array}$$

Include at **Q** the amount calculated using the formula.

To complete this item

Add up all the amounts you worked out for the partnership's or trust's FMIS income and write the total at **Q**.

See **examples 16** and **17** for how to calculate the amount you show at **Q**.

For more information on the CGT treatment of a partnership's or trust's forestry interest, see *Guide to capital gains tax 2009*.

EXAMPLE 16

Cedar Trust is a subsequent participant in an FMIS. It sold its forestry interest at the market value of \$20,000. The sale of the forestry interest is a CGT event. The original cost base was \$14,000.

In the time that Cedar Trust held the forestry interest, it claimed \$4,000 in deductions (its total forestry scheme deductions) for lease fees, annual management fees and the cost of felling that it paid to the forestry manager. In the same period, it received \$1,500 from thinning proceeds (its incidental forestry scheme receipts).

Cedar Trust will need to include **\$2,500** (that is, \$4,000 – \$1,500) at **Q**, because this amount is less than the market value of its forestry interest at the time of the CGT event.

EXAMPLE 17

Oakey Partnership is a subsequent participant in an FMIS. It received harvest proceeds over two income years. It received the first harvest payment of \$5,000 in the 2008–09 income year.

The market value of its forestry interest was \$20,000 just before it received its payment for the first harvest (which is a CGT event). After it received this first harvest payment, the market value of its forestry interest was reduced to \$15,000. Its original cost base was \$14,000.

In the time that it held its interest, Oakey Partnership claimed \$4,000 in deductions (its total forestry scheme deductions) for lease fees, annual management fees and the cost of felling that it has paid to the forestry manager. In the same period, it received \$1,500 from thinning proceeds (its incidental forestry scheme receipts).

Step 1 The market value of the forestry interest (at the time of the CGT event) is \$20,000.

The amount by which the total forestry scheme deductions exceed the incidental forestry scheme receipts is \$2,500 (that is, \$4,000 – \$1,500).

The amount to use in step 2 is \$2,500.

Step 2 Using the formula above:

$$\$2,500 \times \frac{\$5,000}{\$20,000} = \$625$$

Step 3 Oakey Partnership will need to include **\$625** at **Q**.

Step 4 In the 2009–10 income year, Oakey Partnership received \$15,000 in payment for the final harvest (which is a CGT event). It did not pay any other fees in the 2009–10 income year.

Oakey Partnership will need to include the remainder from step 2 of **\$1,875** (that is, \$2,500 – \$625) at **Q** on its 2009–10 tax return.

11 GROSS INTEREST

Show at **J** the interest from banks and credit unions, building societies, debentures, notes and deposits, income accrued on discounted or deferred interest securities, government securities, Australian Government loans issued before 1 November 1968 and interest paid by the Tax Office.

The total – that is the gross amount of interest received or credited – must be included in assessable income.

NOTE

Show interest that is part of a cash management trust distribution or other similar trust investment product at item **8 Partnerships and trusts**.

Copy details from all statements to **worksheet 3** on page 89. Keep the worksheet with your tax records.

Do not include non-share dividends received from holding a non-share equity interest. If the partnership or trust holds such an interest, the issuer is obliged to forward a dividend statement with details of the dividends, which should be shown at item **12 Dividends**. Further information on non-share dividends and non-share equity interests is in *Debt and equity tests: guide to the debt and equity tests*, available on our website.

Discounted, deferred interest or capital-indexed securities

Show at **J** the appropriate amount of discount, interest or other gain which accrued this income year on a discounted, deferred interest or capital-indexed security:

- that was issued after 16 December 1984
- that had a maturity date more than 12 months from the issue date, and
- if the sum of all payments under the security (except periodic interest – for example, a coupon rate) exceeds its issue price by greater than 1.5%.

EXAMPLE 18

On 1 July a zero-interest-discounted security is issued at \$82.65, redeemable on 30 June after two years at a face value of \$100. The investor holds the security until it matures. The investor is required to calculate the effective rate of interest for each six-month period. In this case it is 4.88%.

The accrued amount included in the total income each income year is equal to the increase in value of the security in that year, as follows:

TABLE 8: Value of security

Value of security at:	Year 1 (\$)	Year 2 (\$)	
Beginning of year	82.65	90.91	(a)
Half-year	86.68	95.35	(b)
Increase	4.03	4.44	(b) – (a) = (c)
End of year	90.91	100.00	(d)
Increase	4.23	4.65	(d) – (b) = (f)
Increase for year	8.26	9.09	(c) + (f)

In the example the six-monthly period falls at exactly half-year.

TFN amounts withheld from gross interest

Show at **I** any TFN amounts withheld from gross interest where a TFN has not been provided to the investment body.

Record keeping

Keep all documents issued by the investment body that detail payments of income and any TFN amounts withheld from those payments.

Do not attach these documents to the partnership or trust tax return – keep them with the partnership's or trust's tax records.

NOTE

We may check the amount shown at **J** with our own records to determine accuracy. See **Information matching** on page 9.

12 DIVIDENDS

If the partnership or trust is a shareholder or holder of a non-share equity interest in a company (including a LIC), or held units in a corporate unit trust or a public trading trust, that entity gives the partnership or trust a dividend or non-share dividend statement. The statement is likely to include:

- the name of the entity making the distribution
- the date on which the distribution was made
- the amount of the distribution
- the amount of franking credit allocated to the distribution
- the franking percentage for the distribution
- the amount of any withholding tax that has been deducted from the distribution
- the name of the shareholder
- if the distribution is unfranked, a statement to that effect
- if the distribution is franked, the franked amount and the unfranked amount of the distribution.

If a franked distribution has been received with an associated distribution statement that does not distinguish between the franked and unfranked portions of the dividend, include the total dividend amount at **L Franked amount** and include any attached franking credits at **M Franking credit**.

Show only amounts received from Australian companies, corporate limited partnerships, corporate unit trusts and public trading trusts. Show dividends that are part of a distribution from a managed investment fund or other similar trust investment product at item **8 Partnerships and trusts**. Show dividends received from foreign sources, including dividends from a New Zealand company with Australian franking credits attached, at item **23 Other assessable foreign source income**.

Copy details from all statements to **worksheet 4** on page 90. Keep the worksheet with the partnership's or trust's tax records.

If the partnership or trust was paid a dividend by a LIC and the dividend advice statement shows a LIC capital gain amount, the partnership or trust can claim a deduction of 50% of the LIC capital gain amount at item **16 Deductions relating to Australian investment income**.

Concessional capital distributions from a film licensed investment company

Distributions from a film licensed investment company (FLIC) may be affected by section 375–872 of the ITAA 1997. This provision treats certain distributions of concessional capital (capital that was invested in a FLIC during its licence period) as franked dividends.

A partnership or trust which invested in a FLIC may have received a notice from the company advising that it is returning an amount of concessional capital which, for tax purposes, is a franked dividend. The FLIC will advise the amount of dividend and the franking credit.

T For trusts, show the amount of the franked dividend at **L** and include the franking credit at **M**.

P For partnerships, do not include this dividend and franking credit on the partnership's income tax return. Instead, each partner includes it on their own tax return in the same proportion as that applicable to the subscription payment for the shares.

Dividends on which family trust distribution tax has been paid

To the extent that FTDT has been paid on a dividend paid or credited to the partnership or trust by a company which has made an interposed entity election, the dividend is excluded from the assessable income of the partnership or trust under section 271-105 of Schedule 2F to the ITAA 1936. Do not show it at **K** or **L**. You cannot claim a deduction for any losses or outgoings incurred in deriving an amount which is excluded from assessable income under section 271-105 and you cannot claim a credit or tax offset for any franking credit attached to the non-assessable non-exempt portion of the dividend. Accordingly, do not include any amount at **M** for a franking credit attached to the whole or part of a dividend that is non-assessable non-exempt income under section 271-105. For more information about the circumstances in which FTDT is payable, see pages 22 and 26.

If trustee beneficiary non-disclosure tax has been paid on a dividend that is included in a share of net income to which the partnership or trust is presently entitled or which has been distributed to the partnership or trust, the dividend is not included in the assessable income of the partnership or trust.

You cannot claim a deduction for any losses or outgoings incurred in deriving these amounts which are excluded from assessable income and you cannot claim a tax offset for any franking credits attributable to the dividend.

For more information on dividends, franking credits and tax offset entitlements, see **appendix 1**.

Unfranked amount

Show at **K** the gross amount of unfranked dividends, and the unfranked amount of partially franked dividends, received before any TFN amounts were withheld.

If the partnership or trust is a holder, or an associate of a holder, of a share or non-share equity interest in a private company and it received:

- directly or indirectly payments, loans or forgiveness of a debt from the company
- loans or forgiveness of a debt from a trustee, where the company has an unpaid present entitlement from the trust, or
- payments from a trustee which are attributable to certain unrealised gains, where the company has an unpaid present entitlement to the trust income

the amounts (subject to distributable surplus and in the case of a trust the unpaid present entitlement) of those payments, loans not repaid or debts forgiven are returned as an unfranked dividend unless they are specifically excluded under the provisions of Division 7A of Part III of the ITAA 1936, or the amount treated as a dividend is franked. Division 7A was amended to enable certain amounts treated as dividends to be franked. For example, a private company can frank an amount treated as a dividend that arises because of a family law obligation in certain circumstances.

Dividends paid under a demerger are generally not assessable dividends. Do not include a dividend paid under a demerger at **K** unless the head entity of the demerger group has advised that it is an assessable dividend.

Franked amount

Show at **L** the franked amount of franked dividends received before any TFN amounts were withheld.

If you have received a franked distribution with an associated distribution statement that does not distinguish between the franked and unfranked portions of the dividend, include the total dividend amount at **L** and include any attached franking credits at **M**.

Franking credit

Show at **M** the amount of franking credits received directly from a paying company.

The amount at **M** is distributed to the partners, beneficiaries or trustee and is allowed as a tax offset to reduce their tax payable.

Do not show:

- franking credits if the partnership or trustee did not satisfy the holding period rule and the related payments rule in relation to the dividend (for more information, see **appendix 1**)
- franking credits received indirectly through another partnership or trust – show these amounts at **D**
Share of franking credit from franked dividends item **8**
- franking credits attached to distributions paid by a New Zealand franking company. If the partnership or trust received franked distributions from a New Zealand franking company, see item **23 Other assessable foreign source income**.

TFN amounts withheld from dividends

Show at **N** the total of TFN amounts withheld from dividends received, less any refund of TFN amounts withheld.

NOTE

We may check the amount shown at **K**, **L** and **M** with our own records to determine accuracy. See **Information matching** on page 9.

13 SUPERANNUATION LUMP SUMS AND EMPLOYMENT TERMINATION PAYMENTS

Death benefit employment termination payments (ETPs) and superannuation lump sums paid to trustees of deceased estates are reported at this item. Use the *PAYG payment summary – superannuation lump sum* or *PAYG payment summary – employment termination payment* that your payer has provided to complete this question, as follows:

T Superannuation death benefits paid to a trustee of a deceased estate

A superannuation death benefit paid to a trustee is taxed in the hands of the trustee in the same way that it would be taxed if paid directly to a beneficiary. That is, portions of the payment are subject to tax to the extent that the beneficiary is a dependant or a non-dependant of the deceased. There is no tax payable to the extent that the payment is made to a dependant or eligible non-dependant (see **Definition of terms** on the next page) of the deceased.

Eligible non-dependants of deceased members of the Australian Defence Force and Australian police forces (including Australian Protective Services) who have died in the line of duty are to be treated as dependants for tax purposes.

The superannuation fund should have provided you with a *PAYG payment summary – superannuation lump sum* which shows the taxable components of the payment.

The tax-free component of a superannuation death benefit received by a trustee is not subject to tax, regardless of whether the beneficiary is a dependant or non-dependant.

To the extent that a non-dependant is the beneficiary of the estate, the taxable component of the payment is assessable income. Show the taxed element at **V** item **13** and the untaxed element at **W** item **13**.

If you have more than one payment summary, add the taxable component elements together and show the total of the taxed elements at **V** item **13** and the total of the untaxed elements at **W** item **13**.

T Death benefit employment termination payments

An ETP paid to a trustee is taxed in the hands of the trustee in the same way that it would be taxed if paid directly to a beneficiary. That is, the portions of the payment are subject to tax to the extent that the beneficiary is a dependant or a non-dependant of the deceased.

The employer should have provided you with a *PAYG Payment summary – employment termination payment* which shows the components of the payment.

The tax-free component of an employment termination payment received by a trustee is not subject to tax, regardless of whether the beneficiary is a dependant or a non-dependant.

To the extent that a non-dependant is the beneficiary of the estate, the taxable component of the payment is assessable income and should be shown at **Y** item 13.

To the extent that the beneficiary of the estate is a dependant, taxable component amounts up to the ETP cap (\$145,000 for 2008–09) are not subject to tax and are not shown in the return. Amounts above the ETP cap are assessable income and should be shown at **X** item 13.

If you have more than one payment summary, add the components that are assessable income together and show them at the appropriate label.

For more information on ETPs, see *Employment termination payments* (NAT 70643) at www.ato.gov.au

! NOTE

Definition of terms

Dependant – a person is a dependant of the deceased if, at the time of death or the time the payment was made, the person was:

- the surviving spouse (including a de facto spouse)
- a former spouse (including a former de facto spouse)
- a child of the deceased who was under 18 years old
- financially a dependant of the deceased person just before he or she died
- in an interdependency relationship with the deceased.

A person who is not a dependant of the deceased may be referred to as a **non-dependant**.

Eligible non-dependant – a person is an eligible non-dependant if they are a non-dependant of a deceased member of the Australian Defence Force or of an Australian police force (including Australian Protective Services) who has died in the line of duty.

Interdependency relationship – an interdependency relationship exists where there is a close personal relationship between two persons who live together, and one or both provide for the financial, domestic and personal support of the other. An interdependency relationship can also exist where there is a close personal relationship but the other conditions are not satisfied, because of the physical, intellectual or psychiatric disability of one of the persons.

Spouse – in relation to a person, includes:

- (a) another individual (whether of the same sex or a different sex) with whom the individual is in a relationship that is registered under a prescribed state or territory law
- (b) another individual, whether of the same sex or a different sex, who, although not legally married to the individual, lives with the individual on a genuine domestic basis in a relationship as a couple.

Child – in relation to a person, includes:

- (a) an adopted child, stepchild or an exnuptial child of the person
- (b) a child of the person's spouse (as defined above)
- (c) someone who is a child of the person within the meaning of the *Family Law Act 1975* (for example, a child who is considered to be a child of a person under a state or territory court order giving effect to a surrogacy agreement).

14 OTHER AUSTRALIAN INCOME

Show at **O** the total amount of other Australian income.

If the amount is a loss, print **L** in the box at the right of the amount. The following are some examples of the amounts to be included at **O**.

Gains on the disposal of traditional securities

Show at **O** any gains on the disposal or redemption of a traditional security which are assessable under section 26BB of the ITAA 1936. For more information about gains and losses on traditional securities, including traditional securities that are convertible notes or exchangeable notes, see *You and your shares 2009* (NAT 2632).

Bonuses from life insurance companies and friendly societies

If, during the year ended 30 June 2009, the partnership or trust received any bonuses or other amounts in the nature of bonuses on the maturity, forfeiture, partial or full surrender of a short-term life insurance policy taken out after 7 December 1983, you may need to show the amount at **O**.

Life insurance policies are issued by life insurance companies and friendly societies.

A partnership or trust is regarded as having received a bonus if it re-invests or otherwise deals with the bonus during the income year.

Do not include the amount shown on a bonus certificate if the partnership or trust:

- received it because of death, accident, illness or other disability suffered by the person on whose life the policy was effected
- received it under a policy held by a superannuation fund or scheme, an approved deposit fund or a pooled superannuation trust
- can show that the amount was received because of serious financial difficulties
- received a bonus certificate in respect of an amount allocated to increase the amount receivable on surrender or maturity.

If the policy has a date of commencement of risk on or before 7 December 1983, any bonuses received this year are not assessable.

If the policy has a date of commencement of risk after 7 December 1983, any bonus is included in assessable income in full if received during the first eight years after the date of commencement of risk of the policy. Two-thirds of the bonus amount is included if it is received in the ninth year and one-third of the bonus amount if it is received in the 10th year. Amounts received after the 10th year are not included.

If, during the term of the policy, the amount of a premium increases by more than 25% over the previous year's premium, the policy is taken to have started again with a commencement date at the beginning of the policy year in which the premium increased.

The partner, trustee or beneficiary may, on their own tax return, claim a tax offset for a bonus or any other amount in the nature of a bonus included in the income, if the organisation issuing the life policy is a:

- life insurance company that pays tax on the income from which the amount was paid
- friendly society.

The tax offset for the 2008–09 income year is equal to 30 cents in each dollar.

Include the bonus or other amount in the nature of a bonus in the calculation of net income or loss of the partnership or trust and apportion it among the partners or beneficiaries in the same ratio as they share in that net income or loss.

If the partnership or trust received assessable bonuses from a life insurance company or friendly society, include the total amount at **O**. To ensure that the tax offset is allowed, attach a statement to the partnership or trust tax return showing the amounts from the life insurance company and friendly society life insurance policies.

Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the tax return.

Record keeping

If a bonus or other amount in the nature of a bonus is included at **O**, or an amount was not included because of the circumstances under which it was received, keep a record of the following:

- the type of policy
- the name of the issuing organisation
- the policy number
- the date the policy was taken out
- the bonus statement or advice
- the date that each amount was received
- the nature of each amount – for example, bonus, loan or withdrawal
- the circumstances under which each amount was received – for example, partial surrender of policy, serious financial difficulties, death, accident, illness or other disability
- the basis of calculation of the amount included.

For more information on bonuses received from certain life insurance policies, see *Taxation Ruling IT 2346 – Income tax: bonuses paid on certain life assurance policies – section 26AH – interpretation and operation*.

For more information on amounts switched between investment options for the same life insurance policy, see *Taxation Determination TD 94/82 – Income tax: does section 26AH of the Income Tax Assessment Act 1936 apply when investment options are 'switched' under an eligible policy?*

Bonuses credited from friendly society income bonds

Include bonuses received from friendly society income bonds at **O**. The distribution statement issued by friendly societies to income bond holders will advise the amount that should be included as income. Do not include these amounts in the calculation of the tax offset applicable to bonuses from life insurance policies.

Add backs: Listed investment company capital gain

If a distribution is received from another partnership or trust which advises that it has claimed a deduction for a LIC capital gain amount, the partnership or trust is required to add back as income its share of the deduction allowed to the other partnership or trust.

Royalties

For information on royalty income shown at **O**, see **appendix 2**.

Foreign exchange gains or losses

Show at **O** assessable Australian source foreign exchange (forex) gains or deductible losses that you have not already included at any other label – for example, a label in item **5 Business income and expenses**. If the total amount at **O** is a loss, print **L** in the box at the right of the amount.

For more information on how to calculate forex gains and losses, see **Foreign exchange measures** on page 8.

I NOTE

As foreign currency is a CGT asset, the capital gains provisions apply to any capital gain or capital loss made on a CGT event happening. Any capital gain would generally be reduced to prevent double taxation if the gain was assessable under Division 775 of the ITAA 1997.

P If a partnership has made a foreign exchange gain or loss which is subject to CGT, each partner must include their share of the capital gain or capital loss on their own tax return.

T If a trust has made a foreign exchange gain or loss which is subject to CGT, show the capital gain or capital loss at **A Net capital gain** item **21**.

Excepted net income

Show at **Excepted net income** and include at **O** the excepted net income received, excluding net capital gains that are included at **A Net capital gain** item **21**.

Also attach a statement to the trust tax return:

- detailing the distribution of excepted income to each beneficiary
- listing each beneficiary who is considered to be an excepted person, giving supporting reasons.

Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the tax return. For an explanation of excepted income and excepted person, see **appendix 10**.

15 TOTAL OF ITEMS 5 TO 14

Show at item **15** the total of all Australian income. If this amount is a loss, print **L** in the box at the right of the amount.

DEDUCTIONS

16 DEDUCTIONS RELATING TO AUSTRALIAN INVESTMENT INCOME

Show at **P** the expenses incurred in earning interest and dividends.

If the partnership or trust was paid a dividend by a LIC and the dividend included a LIC capital gain amount, the partnership or trust can claim a deduction of 50% of the LIC capital gain amount. The LIC's dividend advice statement shows the LIC capital gain amount.

Expenses listed here that are costs associated with borrowing and servicing debt may not be allowable deductions under the thin capitalisation rules. For more information, see **appendix 3**. The disallowed amount reduces the amount that would otherwise go at **P**.

Deductions for the decline in value of depreciating assets used to earn interest and dividends are generally shown at **P**. However, if the partnership or trust has allocated some of these assets to a low-value pool, you may need to show deductions at **Q** item **18 Other deductions**. For more information, see **appendix 6**.

Former STS taxpayers

If the partnership or trust is eligible and has chosen to continue using the STS accounting method, it can claim general deductions – for example, interest expense – only when they are paid. For more information on the STS accounting method, see **appendix 14**.

17 FORESTRY MANAGED INVESTMENT SCHEME DEDUCTION

A partnership or trust may be able to claim a deduction at this item for payments made to a forestry managed investment scheme (FMIS) if it:

- currently holds a forestry interest in an FMIS, or held a forestry interest in an FMIS during the income year
- paid an amount to a forestry manager of an FMIS under a formal agreement.

The partnership or trust can only claim a deduction at this item if the forestry manager has advised you that the FMIS satisfies the 70% direct forestry expenditure rule in Division 394 of the ITAA 1997.

If the partnership or trust is an **initial participant**, it cannot claim a deduction if it disposed of the forestry interest in an FMIS within four years after the end of the income year in which a payment was first made.

If the partnership or trust is a **subsequent participant**, it cannot claim a deduction for the amount paid for acquiring the interest. The partnership or trust can only claim a deduction for ongoing payments.

The partnership or trust is an **initial participant** in an FMIS if:

- it obtained the forestry interest in the FMIS from the forestry manager of the scheme
- the payment to obtain the forestry interest results in the establishment of trees.

The partnership or trust is a **subsequent participant** in an FMIS if it obtained the forestry interest in the FMIS from another participant in the FMIS.

The **forestry manager** of an FMIS is the entity that manages, arranges or promotes the FMIS.

A **forestry interest** in an FMIS is a right to benefits produced by the scheme (whether the right is actual, prospective or contingent and whether it is enforceable or not).

Initial participants can claim at this item **initial and ongoing payments** made under an FMIS that were made as an initial participant of the FMIS.

Subsequent participants can claim at this item **ongoing payments** made under an FMIS that were made as a subsequent participant of the FMIS.

Excluded payments

Initial and subsequent participants cannot include in the calculation of direct forestry expenditure any of the following payments made under FMIS (refer to section 394-10 and 394-40 of the ITAA 1997):

- payments for borrowing money
- interest and payments in the nature of interest
- payments of stamp duty
- payments of GST
- payments that relate to transportation and handling of felled trees after the earliest of the following:
 - sale of the trees
 - arrival of the trees at the mill door
 - arrival of the trees at the port
 - arrival of the trees at the place of processing (other than where processing happens in-field)
- payments that relate to processing
- payments that relate to stockpiling (other than in-field stockpiling)
- marketing and sale of forestry produce.

Show at **D** the total amount of deductible payments made to an FMIS.

To complete this item, if the partnership's or trust's interests in FMIS are covered by a product ruling, then:

- print **PR** at **A Code**
- write the year of the product ruling at **B Year**
- write the product ruling number at **C Number** (do not include the **year** of the product ruling or the **slash/at** **C**).

Alternatively, if the partnership's or trust's interests in FMIS are covered by a private ruling/s, then to complete this item:

- print **AN** at **A Code**
- leave **B** blank at **Year**
- write the **authorisation number** that was printed on the front page of your notice of private ruling, at **C Number**.

18 OTHER DEDUCTIONS

Show at **Q** any deductible losses and outgoings not already claimed by the partnership or trust at any other items.

If the partnership or trust is registered for GST, exclude any input tax credit entitlements for expenses incurred by the partnership or trust from the amount shown at **Q**.

Former STS taxpayers

If the partnership or trust is eligible and has chosen to continue using the STS accounting method, it can claim deductions for the following expenses only when they are paid:

- general deductions – for example, interest expense
- tax-related expenses
- expenses for repairs.

For more information on the STS accounting method, see **appendix 14**.

Losses and outgoings

You can claim a deduction for losses and outgoings if they are incurred in gaining or producing assessable income, or necessarily incurred in carrying on a business for the purpose of gaining or producing such income.

However, under section 25–90 of the ITAA 1997 a partnership or trust may be able to claim a deduction for costs incurred in relation to debt interests (as defined in ITAA 1997) if the costs are incurred in earning foreign source income which is non-assessable non-exempt income under section 23AI, 23AJ or 23AK of the ITAA 1936. The amount of the deduction is subject to any reduction required by the thin capitalisation rules.

Debt deductions (such as interest and borrowing costs) for assessable foreign source income that are **not** attributable to an overseas permanent establishment of the taxpayer are not quarantined to assessable foreign source income. Therefore, you can deduct these expenses against assessable income of the partnership or trust, subject to any reduction required under the thin capitalisation rules. Include the deduction for these expenses at **Q**. Do not include them at item **23 Other assessable foreign source income** or any other item.

You cannot claim a deduction for the following:

- losses or outgoings of capital or of a capital, private or domestic nature, except where special provision is made in the income tax law
- expenses incurred in gaining or producing exempt or non-assessable non-exempt income – except certain debt deductions under section 25–90 of the ITAA 1997
- penalties or fines
- income tax liabilities
- entertainment – except in very limited circumstances
- costs associated with borrowing and servicing debt to the extent that a deduction is denied under the thin capitalisation rules.

For more information, see **appendix 3**. The disallowed amount reduces the amount that would otherwise go in **Q**.

Interest expenses

T

If a trustee borrows money to pay distributions to a beneficiary, the trustee will only be able to take into account the interest expenses incurred on those borrowed funds when calculating the net income of a trust estate in certain circumstances. See *Taxation Ruling TR 2005/12 – Income tax: deductibility of interest expenses incurred by trustees on funds borrowed in connection with the payment of distributions to beneficiaries* for more information. To be deductible, the interest expense must be sufficiently connected with the assessable income earning activity of the trust. There will be sufficient connection if the purpose of the trustee borrowing funds is to refinance a returnable amount. Trustees who have incurred interest expenses on monies borrowed to pay distributions to beneficiaries should seek advice either from their professional advisers or the Tax Office.

Tax-related expenses

Show at **Q** any expenses incurred by the partnership or trust in the management of its tax affairs.

These expenses include:

- the cost of attending a Tax Office audit
- tax planning
- expenditure on your income tax affairs – that is, a fee or commission for professional advice where the advice is provided by a registered tax agent, or a barrister or solicitor
- an interest charge imposed by the Tax Office on taxes and penalties not paid on time
- a penalty for underestimating a varied GST instalment or PAYG instalment.

Show a deduction for the decline in value of a depreciating asset used in managing the tax affairs of the partnership or trust at **Q**. For more information about working out decline in value, see **appendix 6**.

You cannot claim a deduction for costs for any offence-related matter – for example, the cost of defending a tax prosecution.

If expenditure allowed or allowable as a deduction is recouped, include the amount recouped in assessable income in the year of recoupment.

Losses on the disposal of traditional securities

Show at **Q** any non-capital losses incurred upon the disposal or redemption of a traditional security which are deductible under section 70B of the ITAA 1936. For more information about gains and losses on traditional securities, including traditional securities that are convertible notes or exchangeable notes, see *You and your shares 2009*.

Payment of premiums to a non-resident insurer

You cannot claim a deduction for insurance premiums paid to a non-resident insurer for the insurance of property situated in Australia or of an event which can happen only in Australia, unless arrangements have been made to the satisfaction of the Tax Office for the payment of any tax payable or that may become payable in relation to the premium. Keep a record of the details supporting any claim for a deduction.

For more information about the tax obligations of non-resident insurers and/or their agents in Australia, visit www.ato.gov.au and search under 'income of non-resident insurer'.

Gifts

The partnership or trust can only claim a deduction for gifts (including cash) made to an organisation which is a deductible gift recipient (DGR). DGRs are endorsed by the Tax Office or specifically named in income tax law (including prescribed private funds). Some of the types of bodies that can be endorsed as DGRs are public benevolent institutions, school building funds and approved overseas aid funds. To check whether the organisation is a DGR, visit the www.abn.business.gov.au website or phone the Tax Office Non-profit Infoline (see the inside back cover).

Gifts of property as well as money may be deductible. This applies to gifts of property valued by the specific valuers at more than \$5,000, and to property purchased by the donor during the 12 months before the gift was made. If claiming a donation for property valued at more than \$5,000, or under the Cultural Gifts Program, or to National Trust bodies, keep the required valuation certificates.

A partnership or trust may elect to spread deductions over five income years or less where the gift is money, or property valued by the Australian Valuation Office at more than \$5,000. For more information about these elections, refer to 'Making tax deductible donations' on our website.

Deductions for political contributions and gifts

Legislation has been introduced into Parliament to remove the deduction for contributions of \$2 or more to political parties and independent candidates and members. At the time of printing these instructions this amendment had not become law. You should check our website (www.ato.gov.au) before claiming a deduction for such contributions.

Gifts of shares valued at \$5,000 or less

From 1 July 2007 you can claim a deduction for a gift of shares to an eligible organisation if your gift meets the following conditions:

- The shares must be in a company that is listed on an approved Australian stock exchange on the day the gift is made.
- You must have acquired the shares at least 12 months before making the donation. Acquired includes purchased, inherited, won or received as a gift or a bonus.
- The shares must have a market valuation of \$5,000 or less on the day of the donation.

The market valuation of the shares is the value of the shares on the day the donor makes the gift. The parcel of shares must be valued at more than \$2.

NOTE

Show at **Q** the deduction for gifts to DGRs. The deduction cannot add to or create a tax loss. You may need to reduce the claim where the amount at item **20 Net Australian income or loss** is a loss.

Subscriptions

Show at **Q** expenses incurred for subscriptions paid to:

- trade, business or professional associations
- other organisations where the subscription expense is incurred in producing assessable income
- journals or magazines where these relate to producing assessable income.

Do not claim for fees paid for membership of a sporting or social club or a political party.

Deductions for depreciating assets in a low-value pool

If the partnership or trust has allocated depreciating assets used for different income-producing purposes to its low-value pool – for example, some assets that are used for producing rental income and others that are used in carrying on a business – show the low-value pool deduction at **Q**. For more information, see **appendix 6**.

Film industry incentives

The conditions under which concessions are available if a trustee invests in or contributes money to the production of a qualifying Australian film are explained in *Australian film industry incentives 2009* (NAT 0954).

The net income of the trust includes:

- deductions allowed for money contributed to the qualifying Australian film – show these deductions at **Q**
- the income from the qualifying Australian film – show this income at item **14 Other Australian income**.

The income received from, and deductions allowed for money contributed to, the qualifying Australian film is not included in the partnership net income or loss but instead in the partner's own tax return. For further information, refer to **appendix 7**.

19 TOTAL OF ITEMS 16 TO 18

Show at item **19** the total deductions relating to Australian income.

20 NET AUSTRALIAN INCOME OR LOSS

Show at **S** the net income or loss relating to Australian income – that is, total Australian income minus total deductions. If this amount is a loss, print **L** in the box at the right of the amount.

21 CAPITAL GAINS



Did you have a CGT event or receive a capital gain from a trust during the year?

If the trust had a CGT event happen during the income year, or if the trust received a distribution of a capital gain from another trust, print **Y** for yes at **G**. Otherwise, print **N** for no at **G**.

If the answer to this question is yes, answer the question below.

Did this CGT event relate to a forestry managed investment scheme interest held other than as an initial participant?

If yes, print **Y** at **H** item **21**. Otherwise print **N** for no.

Generally a trust makes a capital gain or capital loss if certain events or transactions – called CGT events – happen. Most commonly, CGT events happen to a trust's CGT assets – for example, the disposal of a CGT asset – while other CGT events relate directly to capital receipts (capital proceeds).

An Australian resident makes a capital gain or capital loss if a CGT event happens to any of its worldwide CGT assets. Foreign residents are only subject to CGT if a CGT event happens to assets that are taxable Australian property.

Foreign trusts and CGT events

A capital gain or capital loss from a CGT event may be disregarded if you are a foreign resident or the trustee of a foreign trust just before a CGT event which happens in relation to a CGT asset that is not taxable Australian property (see section 855–10 of the ITAA 1997).

A CGT event in relation to an interest in a fixed trust held by a foreign resident may not be subject to CGT if the market value of at least 90% of the assets held by the fixed trust directly or indirectly through a chain of fixed trusts in which the fixed trust has an indirect or direct interest are not taxable Australian property at the time of the CGT event (see section 855–40).

For further information, see the *Guide to capital gains tax 2009*.

CGT worksheets and schedules

If the trust ceases to hold or use a depreciating asset which was used for both taxable and non-taxable purposes, a CGT event may happen to the asset. A capital gain or capital loss attributable to that non-taxable use may arise.

For more information about CGT events, see the *Guide to capital gains tax 2009* which includes a:

- capital gain or loss worksheet for calculating a capital gain or capital loss for each CGT event
- CGT summary worksheet for calculating the trust's net capital gain or capital loss
- CGT schedule.

The worksheets will help you calculate a trust's net capital gain or capital loss for the income year and complete the CGT labels on the trust tax return. You do not have to complete the worksheets. However, if you do, do not attach them to the trust tax return but keep them with the trust's tax records.

Complete a CGT schedule and attach it to the trust tax return if the trust had:

- a CGT event occur in relation to an FMIS interest that is held other than as an initial participant
- total current year capital gains for the income year greater than \$10,000
- total current year capital losses for the income year greater than \$10,000.

However, if the trust was a subsidiary member of a consolidated group at the end of the income year and has completed **Z2 Consolidated subsidiary member** item **2**, you do not need to complete a CGT schedule.

Net capital gain

The trust's net capital gain is the total capital gains it made for the income year less its current year capital losses, prior year net capital losses, CGT discount and any other relevant concessions. Relevant concessions are the small business:

- 50% active asset reduction
- 15-year asset exemption
- retirement exemption
- rollover relief.

Show at **A** the amount of the trust's net capital gain. If you have used the CGT summary worksheet or CGT schedule this is the amount at:

- **G** at **part H** of the CGT summary worksheet in the *Guide to capital gains tax 2009*, or
- **G** at **part H** of the CGT schedule.

For more information on how to calculate the trust's net capital gain, see the *Guide to capital gains tax 2009*. For information about the small business concessions, see the *Guide to capital gains tax concessions for small business* (NAT 8384) and *Advanced guide to capital gains tax concessions for small business* (NAT 3359), available on our website.

NOTE

Record any unapplied net capital losses at item **27**. The trust may need to complete a losses schedule. For more information, see the *Losses schedule instructions 2009* (NAT 4088).

Excepted net capital gain of a minor

Include the amount of any excepted net capital gain of a minor at **A** and attach a statement to the trust tax return:

- detailing the distribution of excepted net capital gains to each beneficiary
- listing each beneficiary who is considered to be an excepted person, giving supporting reasons.

Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the tax return.

For an explanation of excepted income and excepted person, see **appendix 10**.

FOREIGN INCOME

22 ATTRIBUTED FOREIGN INCOME

For more information on calculating the amounts shown at **M**, **U** and **X**, see the *Foreign income return form guide* (NAT 1840), available on our website. For more information on calculating the amount shown at **Y**, see the *Foreign investment funds guide* (NAT 2130), available on our website.

NOTE

If the partnership or trust was a subsidiary member of a consolidated group at any time during the income year and has completed **22 Consolidated subsidiary member** item **2**, a *Schedule 25A 2009* is not required.

Did you have either a direct or indirect interest in a foreign trust, controlled foreign company or transferor trust?

Direct or indirect interests in a controlled foreign company or a foreign trust are taken to have the same meaning as set out in Division 3 of Part X of the ITAA 1936.

A partnership or trust has an interest in a transferor trust if the partnership or trust has ever made, or caused to be made, a transfer of property or services to a non-resident trust. Transfer of property and services is defined in section 102AAB of the ITAA 1936.

Sections 102AAJ and 102AAK of the ITAA 1936 provide guidance on whether there was a transfer, or a deemed transfer, of property or services to a non-resident trust.

If the answer to this question is yes, print **Y** at **S** and complete section B of *Schedule 25A 2009*, together with any other relevant part or schedule, and attach the completed *Schedule 25A 2009* to the partnership or trust tax return.

If the answer to this question is no, print **N** at **S**.

For more information, see the *Schedule 25A instructions 2009* (NAT 2639).

Did you have an interest in a foreign investment fund (FIF) or a foreign life assurance policy (FLP)?

If the answer is yes, print **Y** at **T** and complete section B of *Schedule 25A 2009*, together with any other relevant part or schedule, and attach the completed *Schedule 25A 2009* to the partnership or trust tax return.

If the answer is no, print **N** at **T**.

Interest in a FIF or FLP has the same meaning as set out in section 483 of the ITAA 1936.

Listed country

Show at **M** the amount of gross attributed foreign income from controlled foreign entities and transferor trusts of listed countries. Listed countries are set out in Part 1 of Schedule 10 to the *Income Tax Regulations 1936* (ITR 1936).

Attributed foreign income is the income attributed to the taxpayer from controlled foreign entities, calculated in accordance with Division 7 of Part X of the ITAA 1936, and includes an amount grossed-up under section 392 of the ITAA 1936, as appropriate, to the extent of any foreign taxes paid.

Also show at **M** the amount of income attributed from a transferor trust that is a listed country trust estate, calculated in accordance with Subdivision D of Division 6AAA of the ITAA 1936.

A listed country trust estate is defined in section 102AAE of the ITAA 1936.

Section 404 country

Show at **U** the amount of attributed foreign income from controlled foreign entities in section 404 countries. Section 404 countries are listed in Part 2 of Schedule 10 to the ITR 1936.

Also show at **U** the amount of income attributed from a transferor trust if the entire income and profits of the trust are subject to tax in a section 404 country. Do not include the amount if it is shown at **M**.

Unlisted country

Show at **X** the amount of attributed foreign income from controlled foreign entities in unlisted countries. Unlisted countries are countries that are not listed in Schedule 10 to the ITR 1936.

Also show at **X** the amount of income attributed from a transferor trust if the amount has not been shown at **M** or **U**.

FIF or FLP income

Show at **Y** the amount of net attributed foreign income from FIFs and FLPs. The terms FIF and FLP have the same meaning as set out in sections 481 and 482 of the ITAA 1936 respectively. Attributed foreign income is the income attributed to the taxpayer from FIFs or FLPs, calculated in accordance with Subdivisions B, C or D (for FIFs) and Subdivisions E or F (for FLPs) of Division 18 of Part XI of the ITAA 1936, as appropriate.

23 OTHER ASSESSABLE FOREIGN SOURCE INCOME

T Complete a losses schedule if the trust:

- claims a deduction for pre-commencement foreign losses
- has pre-commencement foreign losses carried forward to later income years
- claims a deduction for prior year CFC losses
- has current year CFC losses
- has CFC losses carried forward to later income years.

If the partnership or trust received assessable dividends directly or indirectly from a New Zealand franking company, the dividends (including any supplementary dividends) must be declared as assessable foreign income even if dividend withholding tax was deducted in New Zealand. The partnership or trust can claim a foreign income tax offset for any New Zealand dividend withholding tax paid on the dividend. See the *Foreign income return form guide* to work out whether the dividend is assessable income.

If the dividend from a New Zealand company is assessable income, then the amount of the Australian franking credit attached to the dividend is also assessable income. Subject to the holding period rule and related payments rule, the partnership or trust can claim a franking tax offset equal to the amount of the Australian franking credit included in its assessable income. For more information, see **appendix 1**.

NOTE

The dividend may also include an amount of New Zealand imputation credits. **Australian residents cannot claim any amounts of New Zealand imputation credits.**

All dividend income, deductions and foreign income tax paid must be converted into Australian dollars. The amount of Australian franking credits should already be expressed in Australian dollars.

Gross foreign source income

Show at **B** the gross amount of assessable income derived from foreign sources, including amounts distributed from other partnerships and trusts as well as New Zealand dividends and supplementary dividends. Include any foreign tax paid on that income.

Do not include:

- any income which is exempt from tax in Australia or treated as non-assessable non-exempt income under sections 23AI and 23AK of the ITAA 1936
- any amount of New Zealand imputation credits
- any amount of Australian franking credits attached to dividends from a New Zealand franking company. Show these amounts at **D Australian franking credits from a New Zealand company**
- income already shown at item **22 Attributed foreign income**
- any foreign source capital gains or capital losses.

NOTE

T Include foreign source capital gains or capital losses when calculating the amount at item **21 Capital gains**.

P Each partner must include their share of any foreign source capital gains or capital losses on their own tax return.

In referring to 'foreign source capital gains' an Australian resident partner or trust makes a capital gain if a CGT event happens to any of their worldwide CGT assets.

A partner or trust that is not an Australian resident makes a capital gain, generally speaking, only if their CGT asset is taxable Australian property just before the CGT event happens.

Net foreign source income

Show at **V** the net income derived from foreign sources.

The amount at **V** is the gross amount shown at **B**, less any deductions allowable to the partnership or trust against that income. Debt deductions (such as interest and borrowing costs) that relate to assessable foreign source income and that are not attributable to an overseas permanent establishment of the taxpayer are not applied against assessable foreign source income for the purpose of calculating net foreign income or identifying a foreign loss. Do not claim these amounts here – include them at item **18 Other deductions**.

If the amount at **V** is negative, print **L** in the box at the right of the amount.

As a result of changes made by *Tax Laws Amendment (2007 Measures No. 4) Act 2007*, foreign losses are no longer quarantined from domestic assessable income (or from assessable foreign income of a different class). Therefore, in utilising deductions, no distinction is made in respect of the source of the assessable income, whether

foreign or domestic. The partnership or trust combines both foreign and domestic deductions. Where the combined deductions exceed net exempt income and assessable income, the excess is a tax loss. This tax loss can be carried forward and applied in a future income year, against firstly net exempt income and secondly the excess of assessable income over deductions (except tax losses).

These changes apply from the entity's first income year starting on or after 1 July 2008 (the commencement year).

Prior year overall foreign losses that exist at commencement are subject to transitional rules. Overall foreign losses for a particular earlier income year will be grouped together and converted to a tax loss. Utilisation of the converted tax loss will be restricted for the first four years after commencement of the new rules. Subsequent to the transitional period, any remaining tax loss will be subject to the ordinary loss utilisation rules. Do not claim these losses here – include any amount of these losses utilised this year at item **25 Tax losses deducted**.

Partnerships are currently unable to utilise foreign losses carried forward from prior years. The Government has announced that legislation will be introduced into Parliament to allow partnerships to utilise foreign losses carried forward from prior years in the same manner as other entities. At the time of printing these instructions, the legislation to give effect to the measure had not been enacted. Check our website at www.ato.gov.au for details on how to complete your return and information about the progress of the Bill that includes this measure.

For more information on the transitional rules, see the *Foreign income return form guide* (NAT 1840) available on our website.

T If a trust is deducting any foreign source losses from its assessable foreign income, the trust must complete a losses schedule and attach it to the trust tax return.

Under the trust loss provisions of Schedule 2F to the ITAA 1936, certain rules have to be satisfied by a trust before it can use prior year unrecouped foreign losses. For more information about the trust loss provisions see **appendix 8**.

Foreign income tax offsets

Show at **Z** the amount of any foreign income tax offsets claimed against foreign source income.

T For trusts, also show offsets for tax paid for foreign sourced gains of a capital nature at **Z**.

P Partnerships do not include offsets for tax paid on foreign sourced gains of a capital nature at **Z**. Each partner must include their share on their own tax return.

To calculate the amounts of net foreign income and foreign income tax offsets allowable, see the publications *Changes to foreign loss quarantining and foreign tax credit calculation rules – Update October 2008 – Fact sheet*, *Foreign income return form guide* and *How to claim a foreign income tax offset* on our website.

Australian franking credits from a New Zealand company

Show at **D** the amount of Australian franking credits that are included in the net income of the partnership or trust because of franked dividends received from a New Zealand franking company directly or indirectly through another partnership or trust.

The amount shown at **D** is not necessarily the total amount that can be claimed by the trustee, each beneficiary or each partner. See **appendix 1** for more information.

24 TOTAL OF ITEMS 20 TO 23

Show at item **24** the total of the amounts shown at items **20 to 23**.

If this amount is a net loss, print **L** in the box at the right of the amount. Do not include prior year Australian or foreign source losses here.

T If the amount shown at item **24** for a trust is a net income amount and the trust is able to deduct the whole or part of prior year losses in the 2008–09 income year under section 36-15 of the ITAA 1997, show the amount of prior year losses to be deducted at item **25 Tax losses deducted**.

25 TAX LOSSES DEDUCTED

Show at **C** tax losses from earlier income years, which are deductible in the 2008–09 income year under section 36-15 of the ITAA 1997.

Exclude the film component of any tax loss (film loss) – a film loss is shown, to the extent permissible, at item **18 Other deductions**. Film losses can only be deducted from net exempt film income or net assessable film income. See Subdivision 375-G of the ITAA 1997.

Show at this label any pre-commencement foreign losses that are being deducted in the current income year. The transitional rules in the *Income Tax (Transitional Provisions) Act 1997* require the extinguishment of certain foreign losses carried forward from prior years on conversion to a tax loss and impose an annual limit on the utilisation of the remaining foreign losses for the first four years of the measure's operation. Do not show current year foreign losses here – they are included at item **23 Other assessable foreign source income**.

NOTE

Complete a losses schedule if the trust is a listed widely held trust (as defined in Schedule 2F to the ITAA 1936) and the trust is required to pass the same business test to claim a deduction for losses in the 2008–09 income year or will be required to pass that test in respect of losses being carried forward to later income years. See Subdivision 269-F of Schedule 2F to the ITAA 1936.

For more information on the requirements for lodging the losses schedule, see the *Losses schedule instructions 2009*.

The following information will help you to complete **C**:

- The total of any tax losses shown at **C** cannot exceed the amount of net income shown at item **24 Total of items 20 to 23**.
- Under the provisions of Schedule 2F to the ITAA 1936, certain conditions have to be satisfied by a trust before it can claim a deduction under section 36-15 of the ITAA 1997 for the whole or part of an earlier income year loss. Some trusts may have to work out their net income and tax loss for a year in a special way under Division 268 of Schedule 2F. For more information about the trust loss provisions, see **appendix 8**.
- Complete item **27 Losses information** if the income injection test under the trust loss provisions prevents the trust – including a family trust – from fully claiming a deduction for tax losses of an earlier income year in the 2008–09 income year. See Division 270 of Schedule 2F to the ITAA 1936.
- If the trust has net exempt income and an excess of assessable income over total deductions – other than tax losses of earlier income years – deduct the tax loss from the net exempt income and then deduct any remaining amount of tax loss from the excess assessable income. See subsection 36-15(3) of the ITAA 1997.
- If the trust has net exempt income and an excess of total deductions – other than tax losses of earlier income years – over assessable income, subtract the excess deductions from the net exempt income and then deduct the tax loss from any net exempt income that remains. See subsection 36-15(4) of the ITAA 1997. A trust's net exempt income is calculated in accordance with section 36-20 of the ITAA 1997.
- Losses from primary production may generally be carried forward indefinitely until deducted, irrespective of the year in which the loss was incurred.
- You cannot claim a deduction for non-primary production losses incurred in income years up to and including the 1988–89 income year. Non-primary production losses incurred in the 1989–90 and later income years may be carried forward indefinitely until deducted.

Record keeping

Keep a record of any claims for undeducted tax losses of earlier income years. The trust must keep a record of its tax losses and account for any adjustments including those made by the Tax Office. If a trust incurs tax losses, you may need to keep records longer than five years from the date when the losses were incurred. Generally, tax losses incurred this year can be carried forward indefinitely, until they are applied by recoupment. When applied, the loss amount is a figure that leads to the calculation of the trust's net income (and beneficiary's taxable income) in that year. It is in the trust's interest to keep records substantiating this year's losses until the amendment period for the beneficiary's assessment for the recoupment year in which the losses are fully applied has lapsed (generally up to four years from the date of that assessment). Complete item **27 Losses information**.

See TD 2007/2 – Income tax: should a taxpayer who has incurred a tax loss or made a net capital loss for an income year retain records relevant to the ascertainment of that loss only for the record retention period prescribed under income tax law?

Beneficiaries with no interest in trust capital

A life tenant is a beneficiary with an interest in the income of the trust for the duration of their life, but with no interest in the capital of the trust.

If the trust includes a beneficiary who is a life tenant or a beneficiary with no interest in the capital of the trust, you cannot claim a deduction for tax losses of earlier income years in calculating the share of those particular beneficiaries in the net income of the trust if the tax losses of previous years are required to be met out of corpus.

EXAMPLE 19

The XYZ trust has tax losses of earlier income years of \$2,000. Its net income is \$20,000 – excluding losses of earlier income years. There are two presently entitled beneficiaries of the trust, each with a 50% interest in the income of the trust. The trust deed requires tax losses to be met out of corpus.

One beneficiary is a life tenant. The other has an interest in the income and the capital of the trust.

In calculating the net income of the trust for the life tenant's share, no account is taken of earlier year losses. The life tenant's share of the net income of the trust for tax purposes is 50% of \$20,000 – that is, \$10,000.

Conversely, in calculating the other beneficiary's share of the net income of the trust, earlier year losses are taken into account. That beneficiary's share of the net income of the trust for tax purposes is 50% of (\$20,000 – \$2,000) – that is, \$9,000.

26 TOTAL NET INCOME OR LOSS

The amount shown at item **26** must be equal to the amount shown at item **24 Total of items 20 to 23**, less any amount shown at item **25 Tax losses deducted**.

If at item **24** you show a net loss amount, the total shown at item **26** is the same. If at item **24** you show a net income amount, the amount at item **26** cannot be a loss since the total amount you can claim as a deduction at item **25** must not exceed the net income at item **24**.

Print **L** in the box at the right of the amount, if the amount at item **26** is a loss.

Do **NOT** include foreign source losses at item **26**. Take these into account, to the extent permitted, at item **23 Other assessable foreign source income**.

27 LOSSES INFORMATION

Do not include carried forward film losses at this item. Pre-commencement foreign losses carried forward are included in the reconciliation statement at **part F** of the losses schedule.

NOTE

If the total of the trust's tax losses and net capital losses carried forward to later income years is greater than \$100,000, complete a losses schedule and attach it to the trust tax return.

Tax losses carried forward to later income years

Show at **U** the undeducted amount of tax losses incurred by the trust that can be carried forward to the 2009–10 income year under section 36-15 of the ITAA 1997.

Net exempt income reduces a current year tax loss. If there is any excess exempt income, then the prior year tax losses will be reduced. Tax losses carried forward may be affected by the commercial debt forgiveness provisions – see **appendix 4**.

If the income injection test in Division 270 of Schedule 2F to the ITAA 1936 prevents the trust from fully claiming a deduction in the 2008–09 income year, include the amount which the trust cannot claim in the amount shown at **U**. Include the full amount of the 'scheme assessable income' within the meaning of Division 270 in the amount of total net income of the trust shown at item **26 Total net income or loss**.

If the trust is required to complete a losses schedule, the amount of the tax losses shown at **U** in **part A** of that schedule must be the same as the amount shown at **U** on the trust tax return.

Do not include any net capital losses to be carried forward to later income years at **U** – show them separately at **V Net capital losses carried forward to later income years** and in the CGT schedule, if a schedule is required.

Net capital losses carried forward to later income years

Show at **V** the total of any unapplied net capital losses from collectables and all other CGT events. This information is calculated or transferred from:

- **V** in part I of the CGT summary worksheet in the *Guide to capital gains tax 2009*, or
- **H** and **I** in part I of the CGT schedule, if a schedule is required.

For more information, see the *Guide to capital gains tax 2009*.

If the trust is required to complete a losses schedule, the amount shown at **V Net capital losses carried forward to later income years** in **part A** of that schedule must be the same as the amount shown at **V** on the trust tax return.

28 LANDCARE AND WATER FACILITY TAX OFFSET

NOTE

You cannot claim the landcare and water facility tax offsets for expenditure incurred after the 2000–01 income year.

Landcare and water facility tax offset brought forward from prior years

Show at **G** the total of any landcare and water facility tax offsets carried forward and available to be applied in this income year.

The landcare and water facility tax offset is a carry-forward, non-refundable tax offset. This means you can carry forward indefinitely any excess tax offset, after tax liabilities are met, to use against future income tax liabilities. Before the tax offset can be applied in a later income year, it must be successively reduced by any unused net exempt income derived in the year the tax offset arose and any subsequent income year – providing you had a taxable income in that year. The tax offset is reduced by 30 cents for each dollar of net exempt income for 2000–01 and later income years.

The amount to show at **G** should take this reduction into account.

29 OVERSEAS TRANSACTIONS

Was the aggregate amount of your transactions or dealings with international related parties (including the value of any property/service transferred or the balance of any loans) greater than \$1 million?

If the answer to this question is no, print **N** at **W**.

If the answer is yes, print **Y** at **W** and complete section A of *Schedule 25A 2009* together with any other relevant part of the schedule. Attach the completed schedule to the tax return.

However, if the partnership or trust was a subsidiary member of a consolidated group at any time during the income year and has completed **Z2 Consolidated subsidiary member** item **2**, you do not need to complete a *Schedule 25A 2009*.

The aggregate amount of the partnership's or trust's transactions or dealings is the total amount of all dealings, whether on revenue or capital account (including property transfers or service provision), and includes the balance of any loans or borrowings outstanding with international related parties. *Transactions must not be netted off against each other. Hence, a \$600,000 purchase from and a \$700,000 sale to a related party should be treated as totalling \$1,300,000 not \$100,000.*

International related parties are persons, including permanent establishments, who are parties to international dealings that can be subject to Division 13 of the ITAA 1936 and/or the business profits article or associated enterprises article of a relevant double tax agreement. The term includes the following:

- any overseas entity or person who participates directly or indirectly in the management, control or capital of the partnership or trust
- any overseas entity or person in respect of which the partnership or trust participated directly or indirectly in the management, control or capital
- any overseas entity or person in respect of which persons who participate directly or indirectly in its management, control or capital are the same persons who participate directly or indirectly in the management, control or capital of the partnership or trust
- a permanent establishment (PE) and its head office
- two PEs of the same person.

'Participates' includes a right of participation, the exercise of which is contingent on an agreed event occurring. 'Person' has the same meaning as in subsection 6 (1) of the ITAA 1936 and section 995-1 of the ITAA 1997. For more information as to the relevant degree of participation, refer to *Taxation Ruling IT 2514 – Income tax: Company Schedule 25A: Information return for companies that transact business with related overseas entities*.

The type of dealings or transactions that will require the partnership or trust to complete part A of *Schedule 25A 2009* are its dealings with related parties as above, such as an overseas holding company, overseas subsidiary,

overseas PE of the entity, or non-resident trust in which the entity has an interest. These dealings or transactions may be the provision or receipt of services, or transactions in which money or property has been sent out of Australia, or received in Australia from an overseas source during the income year. They may also include the transfer of tangible or intangible property, provision or receipt of services, or the provision or receipt of loans or financial services.

If money or property is not actually sent out of Australia or received in Australia, but accounting entries are made that have the effect of money or property being transferred, this is also to be taken as an international transaction.

Non-resident beneficiaries T

Was any beneficiary who was not a resident of Australia at any time during the income year, 'presently entitled' to a share of the income of the trust?

If the answer to this question is no, print **N** at **A**. If the answer is yes, print **Y** at **A**, and ensure that the details of the beneficiaries and the assessable amounts of net income (except amounts covered by a withholding requirement) to which each beneficiary – who is a non-resident at the end of the income year – is presently entitled are entered under **Non-resident beneficiary additional information** in **J** and **K** at the bottom of item **63 Statement of distribution**.

If a non-resident beneficiary is presently entitled to trust income, the trustee pays tax on that income. The trustee, at the time of distribution, deducts the tax payable and remits it to the Tax Office.

Note: Changes have been made to the reporting obligations for trustees of closely held trusts with effect from the first income year starting on or after 24 September 2007. Unless otherwise excluded, trustees of closely held trusts are required to make a correct TB statement for each trustee beneficiary who is presently entitled to either a share of net income or a tax preferred amount.

To make a correct TB statement, a trustee of a closely held trust is required to provide details for each trustee beneficiary. For non-resident trustee beneficiaries, the name and address of the trustee beneficiary is required. For more information, see **appendix 12**.

Attach a statement for each beneficiary who was a non-resident of Australia at any time during the income year, and who was presently entitled to income of the trust, showing:

- full details of any distribution to the beneficiary, including amounts of interest, royalties, franked dividends and unfranked dividends
- if a withholding amount has been paid and remitted to the Tax Office from the distribution, the amount of such distribution and the withholding amount paid
- name and residential address

- if any change occurred in the residency status of the beneficiary during the income year, details of when the beneficiary became or ceased to be a resident
- if from any distribution – other than interest, dividend or royalty income subject to non-resident withholding tax – made to the beneficiary, tax has been deducted and remitted to the Tax Office, the amount of the credit claimed for remittances made
- if it is contended that all or part of the non-resident beneficiary's share of the income included income of the trust derived outside Australia and while the beneficiary was not a resident
 - the beneficiary's share of that income
 - the basis of the contention that the beneficiary is not a resident of Australia.

Also provide evidence that:

- where necessary, approval has been given for the transfer of amounts overseas
- if no amounts have been transferred overseas, the beneficiary's share of income has been applied for the benefit of the beneficiary or otherwise dealt with on behalf of the beneficiary
- the beneficiary has been notified of the entitlement.

Amount of tax spared foreign income tax offsets

Show at **Q** the amount of foreign income tax offsets relating to foreign tax forgone under an investment incentive provided by a foreign government, if the tax forgone is deemed to have been paid for the purpose of Australia's foreign income tax offset rules.

TRANSACTIONS WITH SPECIFIED COUNTRIES

- 1 Did you send any funds or property to, or receive any funds or property from any of the countries listed below? This includes sending or receiving funds or property indirectly – for example, through another entity or country.
- 2 Do you have the ability to control the disposition of any funds, property, investments, or any other assets located in any of the countries listed below? This includes:
 - a. funds or assets that may be located elsewhere but are controlled or managed from one of the countries listed below
 - b. where you have an expectation that you are able to control the disposition of the funds or assets, or you have the capacity to control the disposition indirectly – for example, through associates.

Print **Y** for yes or **N** for no at **C**.

The specified countries are as follows:

Andorra	Liberia
Anguilla	Liechtenstein
Antigua and Barbuda	Marshall Islands
Aruba	Mauritius
Bahamas	Monaco
Bahrain	Montserrat
Belize	Nauru
Bermuda	Netherlands Antilles
British Virgin Islands	Niue
Cayman Islands	Panama
Cook Islands	Samoa
Cyprus	San Marino
Dominica	Seychelles
Gibraltar	St Kitts & Nevis
Grenada	St Lucia
Guernsey	St Vincent & the Grenadines
Isle of Man	Turks & Caicos Islands
Jersey	US Virgin Islands
Labuan (in Malaysia)	Vanuatu

INTEREST

T

Section 128FA exempt interest paid

Show at **D** the amount of any interest paid to non-residents that is exempt from interest withholding tax under section 128FA of the ITAA 1936. The interest withholding tax exemption is available in respect of interest paid by the trustee of an eligible unit trust on certain widely offered debentures and certain widely offered debt interests that are syndicated loans. The definition of eligible unit trust incorporates certain public unit trusts, corporate unit trusts and most public trading trusts. Unit trusts are also able to access the exemption if all their units are held by specified unit holders.

Interest to financial institution exempt from withholding under a double tax agreement

Show at **I** the total amount of any interest paid to United States (US), United Kingdom (UK), Finland, Norway, and Japanese financial institutions that was exempt from withholding tax because of Article 11(3)(b) of Australia's DTAs with these countries.

DTA country

Complete **Y** if you have shown an amount at **Interest to financial institution exempt from withholding under a DTA**.

At **Y** print the three letter country code: **USA** if the payments were to USA financial institutions; **GBR** if to UK financial institutions, **FIN** if to Finnish financial institutions, **NOR** if to Norwegian financial institutions, or **JPN** if to Japanese financial institutions. Print the code for the country where the most exempt interest was paid if payments were made to financial institutions in more than one of these countries.

30 PERSONAL SERVICES INCOME

Does your income include an individual's personal services income?

Personal services income (PSI) is income that is mainly a reward for an individual's personal efforts or skills (or would mainly be such a reward if it was derived by the individual).

A partnership or trust may derive income which includes the PSI of one or more individuals.

Examples of PSI include income:

- for the services of a professional practitioner in a sole practice
- derived under a contract which is wholly or principally for the labour or services of an individual
- for the exercise of professional skills by a professional sportsperson or entertainer
- for the exercise of personal expertise by a consultant.

PSI does not include income that is mainly:

- for supplying or selling goods – for example, from retailing, wholesaling or manufacturing
- generated by an income-producing asset – for example, from operating a bulldozer
- for granting a right to use property – for example, the copyright to a computer program
- generated by a business structure – for example, a large accounting firm.

If the income of the partnership or trust includes an individual's PSI, print **Y** for yes at **N**. Otherwise print **N** for no at **N**.

If you printed **Y** at **N**, complete and attach a *Personal services income schedule 2009* to the partnership or trust tax return. The *Personal services income schedule 2009* has a more detailed explanation of the PSI rules.

If the partnership or trust receives an individual's PSI other than in the course of conducting a personal services business and does not promptly pay it to the individual as salary or wages:

- the net amount of PSI is attributed to the individual and is not assessable to the partnership or trust
- certain related expenses are not deductible under the special rules.

Expenses specifically denied include rent, mortgage interest, rates and land tax for the residence of individuals (or their associates, such as a spouse) whose efforts or skills mainly generate the PSI for the partnership or trust, the costs of a second private use car, and payments of salary or wages and superannuation for associates to the extent such payments relate to non-principal work.

The denied expenses also include the total amount of the deductions allowed to the individual for a net personal services income loss. See the *Personal services income schedule 2009* for more information.

Include adjustments for PSI at **Reconciliation items** item **5**. See **worksheet 1** on pages 86–7.

KEY FINANCIAL INFORMATION

31 ALL CURRENT ASSETS

Show at **F** all current assets of the partnership or trust including cash on hand, short-term bills receivable, inventories and trade debtors as shown at item **41 Trade debtors**.

32 TOTAL ASSETS

Show at **G** all of the partnership or trust assets, including fixed, tangible and intangible assets, and all current assets as shown at item **31 All current assets**.

33 ALL CURRENT LIABILITIES

Show at **I** the total obligations payable by the partnership or trust within the coming year. Also include the amount shown at item **42 Trade creditors**.

34 TOTAL LIABILITIES

Show at **J** all of the partnership or trust liabilities, including other creditors and deferred liabilities such as loans secured by mortgage and long-term loans. Also include the amount shown at item **33 All current liabilities**.

35 PROPRIETORS' FUNDS

Show at **K** the net proprietors' funds from the accounting records of the partnership or trust. The amount shown at item **32 Total assets** less the amount shown at item **34 Total liabilities** equals the amount shown at **K**.

If this amount is negative, print **L** in the box at the right of the amount.

NOTE

Partnerships and trusts that have adopted the *Australian Equivalent to International Financial Reporting Standards* to prepare their financial reports should not include the current value of amounts invested in the partnership or trust by partners or trust beneficiaries at **J** item **34**. The current value of amounts invested in the partnership or trust should be disclosed at **K** item **35** even where that value is treated as a liability of the partnership or trust in its financial reports.

BUSINESS AND PROFESSIONAL ITEMS

36 BUSINESS NAME OF MAIN BUSINESS

The business name of the main business activity should be consistent from year to year, except in the year of a name change or if it is no longer the main business.

If the business name is legally changed, send written advice of the change to the Tax Office at the time the change is made. Show the current business name on the tax return.

37 BUSINESS ADDRESS OF MAIN BUSINESS

Show the street address of the main business. This is the place where most of the business decisions are made. Ensure that you include the postcode at **A**.

NOTE

Items **38** to **40** below reflect amounts that have been calculated for tax purposes.

38 OPENING STOCK

Show at **C** the total value of all trading stock on hand at the beginning of the income year or accounting period for which the partnership or trust tax return is being prepared. The amount shown by the partnership or trust at **C** is the calculated value for income tax purposes under section 70–40, or for small business entities using the simplified trading stock rules subsection 328-295(1) of the ITAA 1997. The opening value of an item of stock must equal its closing value in the previous year. If you did not have any trading stock in the previous year, the value of trading stock at the start of the year is zero. This might occur in the case of a new business or in the first year you have trading stock.

Include motor vehicle floor plan stock and work in progress of manufactured goods.

Do not include any amount that represents opening stock of a business that started operations during the income year. Show this amount at **Expenses, E Cost of sales** item **5**.

39 PURCHASES AND OTHER COSTS

Show at **B** the cost of direct materials used for manufacture, sale or exchange in deriving the gross proceeds or earnings of the business.

Former STS taxpayers

If the partnership or trust is eligible and has chosen to continue using the STS accounting method, only show at **B** purchases and other costs which the partnership or trust has paid. See **appendix 14**.

40 CLOSING STOCK

If the partnership or trust is a small business entity choosing to use the simplified trading stock rules, see the information for small business entities below. Otherwise go to **All other businesses** in the next column.

Small business entities

Small business entities only need to account for changes in the value of trading stock if the value of stock on hand at the start of the income year and a reasonable estimate of the value of stock on hand at the end of the income year varies by more than \$5,000.

For more information on 'reasonable estimate', visit www.ato.gov.au or phone the Business Infoline.

Small business entities who wish to do so can still conduct a stocktake and account for changes in the value of trading stock.

If the difference between the value of opening stock and a reasonable estimate of closing stock is more than \$5,000 the partnership or trust must account for the change in the value of trading stock. Go to step 2. If the difference is not more than \$5,000, go to step 1.

Step 1

If the difference referred to above is \$5,000 or less and the partnership or trust chooses not to account for this difference, the closing stock value at **D** is the same as the value at **C** item **38 Opening stock**. Do not put the reasonable estimate at **D**.

Print in the CODE box at the right of **D** the code letter from **table 9** that matches the code the partnership or trust used to value closing stock in the previous year.

TABLE 9

Code	Valuation method
C	Cost
M	Market selling value
R	Replacement value

If this is the partnership's or trust's first year in business the value of the closing stock will be zero. Print **C** in the CODE box.

Step 2

If the difference referred to above is more than \$5,000 or the partnership or trust chooses to account for the difference in trading stock, the closing stock values must be brought to account under section 70-35 of the ITAA 1997. See the information for **All other businesses** below for instructions on how to calculate the value of closing stock.

The partnership or trust must include in the closing stock value at **D** the value of all stock on hand, regardless of whether the partnership or trust has paid for the stock.

All other businesses

Show at **D** the total value of all trading stock on hand at the end of the income year or accounting period for which the partnership or trust tax return is being prepared. The amount at **D** is the value calculated for income tax purposes under section 70-45 of the ITAA 1997.

If the partnership or trust is registered for GST, the value of closing stock (other than items the supply of which was not a taxable supply) should not include an amount equal to the input tax credit that would arise if the partnership or trust had acquired the item solely for business purposes at the end of the income year. Input tax credits do not arise for some items of trading stock, such as shares.

Include motor vehicle floor plan stock and work in progress of manufactured goods.

Do not include any amount for closing stock of a business that ceased operations during the income year. Show this amount at **Total business income** item 5.

Print in the CODE box the code from **table 9** indicating the method used to value closing stock for income tax purposes. If you use more than one method, use the code for the method representing the greatest value.

You can use different methods to value the same item of trading stock in different income years, and you can value similar items using different methods in the same income year.

However, the opening value of an item in a particular income year must equal the closing value for that item in the previous income year. The partnership or trust cannot reduce the value of stock on hand by creating reserves to offset falls in the value of stock or any other factors. Keep records showing how each item was valued.

The partnership or trust may elect to value an item of trading stock below the lowest value calculated by any of these methods because of obsolescence or other special circumstances. The value in the election must be reasonable. If you elect to value an item of trading stock below cost, market selling value and replacement value, see **58 Trading stock election** on page 72.

If you include incorrect trading stock information on the tax return, advise the Tax Office by submitting a full statement of the facts, accompanied by a reconciliation of the value of stock as returned for each income year with the values permissible under the law.

Partnerships and trusts engaged in manufacturing include the value of partly manufactured goods as part of their stock and materials on hand at the end of the income year.

For information on the circumstances in which packaging items held by a manufacturer, wholesaler or retailer are 'trading stock' as defined in section 70-10 of the ITAA 1997, see Taxation Ruling TR 98/7 – *Income tax: whether packaging items (ie, containers, labels, etc) held by a manufacturer, wholesaler or retailer are trading stock*.

NOTE

Items **41** and **42** below reflect amounts calculated for accounting purposes.

41 TRADE DEBTORS

Show at **E** the total amounts owing to the partnership or trust at year end for goods and services provided during the income year – that is, current trade debtors. Also include this amount at item **31 All current assets**.

42 TRADE CREDITORS

Show at **H** the total amounts owed by the partnership or trust at year end for goods and services received during the income year – that is, current trade creditors. Also include this amount at item **33 All current liabilities**.

NOTE

Items **43** to **48** below reflect amounts that have been calculated for tax purposes.

43 TOTAL SALARY AND WAGE EXPENSES

Show at **L** the total salary, wages and other labour costs actually paid or payable to persons employed in the partnership's or trust's business. However, exclude those costs for private domestic assistance or which form part of capital expenditure, as they are not deductible.

A partner cannot be an employee of a partnership. You cannot claim a deduction for partners' salaries, nor can partners' salaries create or increase a partnership loss. In reality, partners' salaries are an allocation or advancement of profits before general distribution and are not taken into account in calculating the net partnership income or loss, see *Taxation Ruling TR 2005/7 – Income tax: the taxation implications of 'partnership salary' agreements*.

You can only claim a deduction for a payment made or liability incurred by a partnership or trust to an associated person, principal, agent, related entity and/or associate entity if it is incurred in producing assessable income and the Tax Office is satisfied that the amount is reasonable.

These expenses include any salary and wage component of **Expenses, E Cost of sales** item 5 – that is, allowances, bonuses, casual labour, retainers and commissions paid to people who received a retainer, and workers' compensation paid through the payroll. Also included are direct and indirect labour costs, directors' fees, holiday pay, locums, long service leave, lump sum payments, other employee benefits, overtime, payments under an incentive or profit sharing scheme, retiring allowances, and sick pay. Include any salary or wages paid to an associated person, principal, agent, related entity and/or associate entity here and at item **44 Payments to associated persons**.

However, these expenses do not include agency fees, contract payments, sub-contract payments, service fees, superannuation, management fees and consultant fees.

Print in the CODE box the code from **table 10** that matches the description of the expense component where salary and wage expenses have been wholly or predominantly reported.

TABLE 10

	Code
Included in the expense component of: Cost of sales	C
All other expenses	A
Included in both the expense components of: Cost of sales and All other expenses	B
Included in other than: Cost of sales and/or All other expenses	O

44 PAYMENTS TO ASSOCIATED PERSONS

P For partnerships, show at **M** the amounts, including salaries, wages, commissions, superannuation contributions or allowances, paid to:

- a relative of a partner
- another partnership in which a relative is a partner
- a shareholder or director (or their relatives) of a private company that is a partner in the partnership
- a beneficiary (or a relative of a beneficiary) of a trust where the trustee is a partner in the partnership.

Do not show at **M** the amounts paid to a partner in the partnership.

T For trusts, show at **M** the amounts, including salaries, wages, commissions, superannuation contributions or allowances, paid to the trustee's relatives or partnerships in which a relative of the trustee is a partner.

For partnerships and trusts, also include the amounts of salaries and wages paid to an associated person, relative, principal, agent, related entity and/or associate entity at item **43 Total salary and wage expenses**.

Record keeping

Excessive payments to a relative or other related entity may not be deductible (see section 26–35 of the ITAA 1997). Keep a record of the following to establish the reasonableness of remuneration:

- full name of relative or other related entity
- relationship
- age, if under 18 years of age
- nature of duties performed
- hours worked
- total remuneration
- salaries or wages claimed as deductions
- other amounts paid – for example, retiring gratuities, bonuses and commissions.

45 INTANGIBLE DEPRECIATING ASSETS FIRST DEDUCTED

If the partnership or trust is a small business entity using the simplified depreciation rules, do not include an amount at this item.

The following intangible assets are regarded as depreciating assets (as long as they are not trading stock):

- certain items of intellectual property – patents, registered designs, copyrights and certain types of licences of these
- computer software (or a right to use computer software) that the partnership or trust acquires, develops or has someone else develop for its own use (in-house software)
- mining, quarrying or prospecting rights and information
- spectrum licences
- datacasting transmitter licences
- certain indefeasible rights to use telecommunications cable systems (IRUs)
- some access rights to telecommunications sites.

A depreciating asset that the partnership or trust holds starts to decline in value from the time the partnership or trust uses it (or installs it ready for use) for any purpose, including a private purpose. However, the partnership or trust can only claim a deduction for the decline in value to the extent it uses the asset for a taxable purpose, such as for producing assessable income.

Show at **N** the cost of all intangible depreciating assets for which the partnership or trust is claiming a deduction for decline in value for the first time. If the partnership or trust has allocated any intangible depreciating assets with a cost of less than \$1,000 to a low-value pool for the income year, also include the cost of those assets at **N**. Do not reduce the cost for estimated non-taxable use.

Do not include expenditure on in-house software which has been allocated to a software development pool at **N**.

For more information on decline in value, cost, low-value pools, in-house software and software development pools, see the *Guide to depreciating assets 2009*.

If you show an amount of more than \$75,000 at **N**, complete and attach a *Capital allowances schedule 2009*. For more information, see the *Capital allowances schedule instructions 2009*.

46 OTHER DEPRECIATING ASSETS FIRST DEDUCTED

If the partnership or trust is a small business entity using the simplified depreciation rules, do not include an amount at this label.

A depreciating asset that the partnership or trust holds starts to decline in value from the time the partnership or trust uses it (or installs it ready for use) for any purpose. However, the partnership or trust can only claim a deduction for the decline in value to the extent it uses the asset for a taxable purpose, such as for producing assessable income.

Show at **U** the cost of all depreciating assets (other than intangible depreciating assets) for which the partnership or trust is claiming a deduction for the decline in value for the first time. If any assets (other than intangible depreciating assets) costing less than \$1,000 have been allocated to a low-value pool for the income year, also include the cost of those assets at **U**. Do not reduce the cost for any estimated non-taxable use.

For information on decline in value, cost and low-value pools, see the *Guide to depreciating assets 2009*.

If an amount of more than \$75,000 is shown at **U**, complete and attach a *Capital allowances schedule 2009*. For more information, see the *Capital allowances schedule instructions 2009*.

47 TERMINATION VALUE OF INTANGIBLE DEPRECIATING ASSETS

If the partnership or trust is a small business entity using the simplified depreciation rules, do not include an amount at this label.

For more information on intangible depreciating assets, see **45 Intangible depreciating assets first deducted** on the previous page.

Show at **O** the termination value of each balancing adjustment event occurring for intangible depreciating assets to which the UCA rules applied – including assets allocated to a low-value pool.

Do **not** show at **O** any consideration received during the income year for in-house software for which the partnership or trust has allocated expenditure to a software development pool.

A balancing adjustment event occurs if the partnership or trust stops holding or using a depreciating asset or decides not to use it in the future – for example, assets sold, lost or destroyed. Generally, the termination value is the amount the partnership or trust receives or is deemed to receive in relation to the balancing adjustment event. It also includes the market value of any non-cash benefits such as goods and services the partnership or trust receives for the asset.

For more information on balancing adjustment events, termination value, in-house software and software development pools, see the *Guide to depreciating assets 2009*.

48 TERMINATION VALUE OF OTHER DEPRECIATING ASSETS

If the partnership or trust is a small business entity using the simplified depreciation rules, do not include an amount at this label.

Show at **W** the termination value of each balancing adjustment event occurring for depreciating assets – including assets allocated to a low-value pool.

Do not show at **W** any consideration received during the income year for:

- depreciating assets allocated in a prior year to a general small business pool or long-life small business pool
- intangible depreciating assets
- buildings or structures for which a deduction is available under the capital works provisions
- assets used in research and development activities
- assets falling within the provisions relating to investments in Australian films.

A balancing adjustment event occurs if the partnership or trust stops holding or using a depreciating asset or decides not to use it in the future – for example, assets sold, lost or destroyed. Generally, the termination value is the amount the partnership or trust receives or is deemed to receive in relation to the balancing adjustment event. It also includes the market value of any non-cash benefits such as goods and services the partnership or trust receives for the asset.

For more information on balancing adjustment events and termination value, see the *Guide to depreciating assets 2009*.

49 DEDUCTION FOR PROJECT POOL

Show at **P** the partnership's or trust's deductions for project pools. For more information, see **appendix 6**.

If an amount greater than \$1,000 is shown at **P** complete and attach a *Capital allowances schedule 2009* unless the partnership or trust is a small business entity using the simplified depreciation rules.

50 SECTION 40-880 DEDUCTION

Show at **X** the total of the partnership's or trust's deductions allowable under section 40-880 of the ITAA 1997. For more information, see **appendix 6**.

51 SMALL BUSINESS AND GENERAL BUSINESS TAX BREAK

Show at **F** the total of the partnership's or trust's deductions allowable for the small business and general business tax break. For more information, see **appendix 6**.

52 FRINGE BENEFIT EMPLOYEE CONTRIBUTIONS

Show at **T** all payments the partnership or trust has received from recipients of fringe benefits.

Employee contributions form part of the employer's or associate's assessable income in situations where employees make payments for fringe benefits they have received.

53 INTEREST EXPENSES OVERSEAS

Show at **Q** the amount of interest paid on money borrowed from overseas sources. Also include this amount at **Expenses, I Total interest expenses** item 5.

An amount of tax – withholding tax – is generally withheld from interest paid or payable to non-residents, and from interest derived by a resident through an overseas branch. You must remit these amounts to the Tax Office. You cannot claim a deduction unless you have remitted any withholding tax to the Commissioner. If you have withheld amounts from payments to non-residents, you may need to lodge a *PAYG withholding from interest, dividend and royalty payments paid to non-residents – annual report* by 31 October 2009. For more information, phone the Business Infoline.

54 ROYALTY EXPENSES OVERSEAS

Show at **R** the royalty expenses paid to non-residents during the income year.

This amount is included in **Expenses, J Total royalty expenses** item 5, plus or minus any reconciliation adjustment for royalty expenses that was included at **Reconciliation items, B Expense reconciliation adjustments** item 5.

An amount of tax – withholding tax – is generally withheld from royalties paid or payable to non-residents and from royalties derived by a resident through an overseas branch. You must remit this amount to the Tax Office. You cannot claim a deduction unless you have remitted any withholding tax to the Commissioner. If you have withheld amounts from payments to non-residents, you may need to lodge a *PAYG withholding from interest, dividend and royalty payments paid to non-residents – annual report* by 31 October 2009. For more information, phone the Business Infoline.

Record keeping

Keep a record of the following:

- name and address of recipient(s)
- amounts paid
- nature of the benefit derived – for example, a copy of the royalty agreement
- details of tax withheld where applicable and the date on which it was remitted to the Tax Office.

55 LANDCARE OPERATIONS AND DEDUCTION FOR DECLINE IN VALUE OF WATER FACILITY T

Show at **S** the deduction available to the trust for landcare operations and for the decline in value of water facilities. For more information, see **appendix 6**.

56 DEDUCTION FOR ENVIRONMENTAL PROTECTION EXPENSES

Show at **V** the amount of allowable expenditure on environmental protection activities. For more information, see **appendix 6**.

57 UNPAID PRESENT ENTITLEMENT TO A PRIVATE COMPANY T

Show at **Y** any amounts from the net income of the trust from this year or a previous year of income to which a private company is presently entitled and that remains unpaid by the 'lodgment day'. If the amount is greater than zero, print **D** in the CODE box at the right of **Y** where, during the income year, the trustee of the trust estate:

- made a payment that is attributable to an unrealised gain that discharged or reduced a present entitlement
- made a loan
- forgave a debt

in favour of a shareholder (or an associate of a shareholder) of a private company with the unpaid present entitlement. Print **X** in the CODE box at the right of **Y** if none of the above transactions took place.

Lodgment day

The lodgment day is the earlier of the due date for lodgment and date of lodgment of the trust's tax return for the income year in which the payment, loan or debt forgiveness occurred.

58 TRADING STOCK ELECTION

The partnership or trust may elect to value an item of trading stock below the lowest value of cost, market selling value, or replacement value, because of obsolescence or any other special circumstances. The value it elects must be reasonable. For more information on trading stock valuations where obsolescence or other special circumstances exist, see *Taxation Ruling TR 93/23 – Income tax: valuation of trading stock subject to obsolescence or other special circumstances*.

If an election is made, print **Y** for yes in the box at this item.

59 SMALL BUSINESS ENTITY DEPRECIATING ASSETS

Only complete this item if the partnership or trust is a small business entity using the simplified depreciation rules.

To complete this item use the amounts calculated for small business entity depreciation deductions at **Expenses, K Depreciation expenses item 5**:

- **deduction for low-cost assets (less than \$1,000)** – show at **A** the total amount claimed relating to low-cost assets
- **deduction for general pool assets (less than 25 years)** – show at **B** the total amount claimed relating to the general small business pool
- **deduction for long-life pool assets (25 years or more)** – show at **C** the total amount claimed relating to the long-life small business pool.

NOTE

Remember, only put the depreciation deduction in the three small business entity depreciating asset labels – not the pool balance.

60 ENTREPRENEURS' TAX OFFSET

NOTE

Only complete this item if the partnership or trust is an eligible small business entity.

The entrepreneurs' tax offset is an incentive to encourage small business growth. Certain small business entities are eligible to receive this tax offset, which can be up to 25% of their income tax liability in respect of their business income.

The entrepreneurs' tax offset is provided under Subdivision 61-J of the ITAA 1997. It is a non-refundable tax offset and cannot be transferred to other entities or carried forward to later income years.

The tax offset is available to:

- an individual or a company that is a small business entity
- a partner in a partnership that is a small business entity
- a trustee or beneficiary of a trust that is a small business entity, depending on who is liable for tax on the trust income.

The amount of your tax offset will vary depending on the *aggregated turnover* of the small business entity. If the aggregated turnover is \$50,000 or less, you can claim a tax offset equal to 25% of your income tax liability attributable to your business income. The tax offset begins to phase out when the aggregated turnover of the small business entity exceeds \$50,000 and is reduced to zero when the aggregated turnover reaches \$75,000.

P A partner in a partnership that is a small business entity may be entitled to the tax offset in respect of net small business income earned by the partnership through its business activities, provided the partner's assessable income includes a share of that net small business income. However, partners are not entitled to the tax offset in respect of a share of net small business income that the partnership received from another partnership or a trust.

T Beneficiaries and trustees of a trust that is a small business entity may be entitled to the tax offset in respect of net small business income earned by the trust through its business activities, provided the assessable income of those entities includes a share of that net small business income. However, beneficiaries and trustees of a trust are not entitled to the tax offset in respect of a share of net small business income that the trust received from another trust or a partnership.

Table 11 summarises where a partner in a partnership that is a small business entity and a beneficiary and trustee of a trust that is a small business entity may be entitled to an entrepreneurs' tax offset for different sources of net small business income.

TABLE 11

Entrepreneurs' tax offset entitlement	Source of net small business income	
	Derived from the partnership or trust's business activities	Received by this partnership or trust from another partnership or trust that is a small business entity
For a partner in a partnership that is a small business entity	Possible entitlement (subject to the eligibility criteria)	No entitlement
For a beneficiary of a trust that is a small business entity assessed under section 97	Possible entitlement (subject to the eligibility criteria)	No entitlement
For a trustee of a trust that is a small business entity assessed under section 98	Possible entitlement (subject to the eligibility criteria)	No entitlement
For a trustee of a trust that is a small business entity assessed under section 99 or 99A	Possible entitlement (subject to the eligibility criteria)	No entitlement

Partners, beneficiaries and trustees entitled to the entrepreneurs' tax offset must show the required information at this item and at item **63 Statement of distribution**.

Small business entity aggregated turnover

Show at **D** the small business entity aggregated turnover of the partnership or trust. This is the annual business turnover (see page 126) of the partnership or trust plus the annual business turnovers of its *affiliates* and any entities it is *connected with*. There are aggregation rules to help you determine who is an affiliate and when an entity is connected with you for the purpose of calculating your aggregated turnover. Certain transactions, such as income from dealings between the partnership or trust and any entities that it is connected with, or that are its affiliates, are excluded from aggregated turnover. For more information, see the *Guide to concessions for small business entities*.

If the partnership or trust is not affiliated or connected with any other entities under the aggregation rules, the aggregated turnover of the partnership or trust will be equal to its annual business turnover.

STOP

If the partnership's or trust's aggregated turnover is \$75,000 or more, do not complete this item – the trustee, beneficiary or partner is not entitled to an entrepreneurs' tax offset.

Small business entity turnover

This is the amount of total ordinary income earned in the income year in the ordinary course of carrying on a business and is used in determining the net small business entity income – see below.

It includes amounts such as payments for goods or services supplied, professional fees, commissions, interest received on amounts deposited in business banking accounts, and holding or security deposits forfeited by customers.

It excludes amounts such as GST you have charged on a transaction, rental income where rental activities do not form an ordinary part of the business, amounts resulting from realisation of an investment (such as the proceeds from the sale of a capital asset used in the business), payments received under an insurance recovery, and the principal component of a loan repayment.

In most cases, the aggregated turnover amount for the partnership or trust will be the same as its small business entity turnover. However, if any of the following circumstances apply you will need to make the following adjustments to calculate the small business entity turnover:

- If you have included another entity's turnover in the aggregated turnover amount for the partnership or trust, you will need to:
 - exclude that entity's turnover
 - add back any income the partnership or trust derived from its affiliates or connected entities.

- If the partnership or trust operated a business for part of the year, you only include the actual turnover amount for the partnership or trust, you do not need to use the estimate of its full year turnover.
- If the partnership or trust derived income from retail fuel sales, you must add back the sales amount.

Net small business entity income

Show at **E** the net small business entity income the partnership or trust earned from its business activities. Net small business income is the small business entity turnover of the partnership or trust less the allowable deductions attributable to that turnover.

Do not include any net small business income amounts received from partnership or trust distributions.

There must be an amount of net small business income included in the trustee, beneficiary or partner's assessable income before an entitlement to an offset arises for those entities.

NOTE

- 1 In determining net small business income, the allowable deductions attributable to the small business entity turnover do not include:
 - tax losses from prior years
 - superannuation contributions
 - gifts or donations
 - costs of managing tax affairs.
- 2 If the partnership's or trust's small business pool includes any assets that are used partly for business and partly for other income-producing activities, the small business pool deduction for the purposes of determining the entity's net small business income must be apportioned using a reasonable basis.

STOP

Do not complete this item if there is no net small business income or the allowable deductions exceed the small business entity turnover.

For more information about the entrepreneurs' tax offset, visit our website or phone the Business Infoline.

EXAMPLE 20: Trustee's entitlement to entrepreneurs' tax offset



The Jarndyce Trust is a small business entity for the year ended 30 June 2008. The trust's net income for the year was \$40,000 (representing business turnover of \$45,000 less business expenses of \$10,000 plus net rental income from a residential rental property of \$5,000). The trust is not grouped with any other entity under the aggregation rules so its aggregated turnover is also \$45,000.

Thomas is a non-resident beneficiary of the Jarndyce Trust who received all of the trust's net income for the year. The trustee of the Jarndyce Trust will be assessed under section 98 of the ITAA 1936 in respect of the net income of the trust which was distributed to Thomas.

The preparer of Jarndyce's income tax return would record:

- the trust's small business entity aggregated turnover (\$45,000) at **D**
- the amount of net small business entity income earned from the trust's business activities (\$35,000) at **E**
- Thomas's share of net small business entity income (\$35,000) at item **60**.

Using this information, the Tax Office would calculate the trustee's tax offset as follows:

Step 1

Calculate the net income of the trust = \$40,000

Step 2

Calculate 25% of the trustee's tax liability on the trust's net income (apart from any offsets) = 25% of the income tax liability of *\$11,660 = \$2,915

Step 3

Calculate the small business percentage = net small business entity income / net income x 100 = \$35,000 / \$40,000 x 100 = 87.5% (the small business percentage)

Step 4

If the trust's small business entity aggregated turnover is less than \$50,000, calculate the entrepreneurs' tax offset (the step 2 amount x the small business percentage). = \$2,915 x 87.5% = \$2,550.62

Step 5

If the trust's small business entity aggregated turnover is greater than \$50,000, calculate the small business phase out fraction. = \$75,000 – small business entity aggregated turnover / \$25,000
Step 5 is not applicable in this example as the trust's small business entity turnover is less than \$50,000.
If step 5 was applicable, the entrepreneurs' tax offset would be calculated as the step 2 amount x the small business percentage x the small business phase out fraction.

The trustee is entitled to a tax offset of \$2,550.62.

* Non-resident individual tax rates applying to the trust net income of \$40,000

The entrepreneurs' tax offset and PAYG

The entrepreneurs' tax offset (ETO) is not taken into consideration when determining the rate of PAYG instalments.

If an entity anticipates that it will be entitled to the offset on assessment, the entity may vary its instalments during the year. However, the entity may be liable to the general interest charge where a variation results in an underestimation of the instalments of more than 15%.

61 NATIONAL RENTAL AFFORDABILITY SCHEME TAX OFFSET

The National rental affordability scheme (NRAS) is designed to encourage large-scale investment in affordable housing. The NRAS offers incentives to providers of new dwellings on the condition that they are rented to low and moderate income households at 20% below market rates. Entities participating in the NRAS may claim their share of the refundable tax offset in their tax return.

Partners and trustees entitled to the NRAS tax offset must show the entitlement at this item and at item **63 Statement of distribution**. The amount of the entity's tax offset is the amount stated in the certificate issued by the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs. However, if the Secretary issues the entity with an amended certificate under the *National Rental Affordability Scheme Act 2008*, the amount of the entity's tax offset is the amount stated in the amended assessment.

62 MEDICARE LEVY REDUCTION OR EXEMPTION

T

A trustee only needs to complete this item if all of the following conditions apply:

- The trustee is liable to be assessed on a share of the net income of the trust to which a beneficiary who is under a legal disability is presently entitled.
- That beneficiary's share of the net income of the trust is more than the relevant threshold amount for the Medicare levy as set out in part A of question **M1** in *TaxPack 2009* – either the relevant threshold amount for all other taxpayers or, if eligible, the relevant threshold for the pensioner or person entitled to the senior Australians tax offset.
- That beneficiary qualifies for an exemption or reduction in the Medicare levy under one of the categories set out in question **M1** in *TaxPack 2009*.

If there is more than one such beneficiary, attach a statement to the trust tax return setting out the information required at this item for each additional beneficiary. Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the trust tax return.

Spouse's 2008–09 taxable income

Show at **A** the taxable income of the beneficiary's spouse for the 2008–09 income year. If the beneficiary had no spouse or had a spouse who had no taxable income, write zero (0) at **A**.

Number of dependent children and students

Show at **B** the number of the beneficiary's dependent children and students – if any.

Labels C and D

For details of the various Medicare levy exemption categories, see *TaxPack 2009*.

Full 1.5% levy exemption – number of days

Show at **C** the number of days in the 2008–09 income year for which the beneficiary was entitled to the full Medicare levy exemption. If you have completed **C** and the beneficiary has been issued with a Medicare exemption certificate from the Medicare Levy Exemption Certification Unit of Medicare Australia showing that the beneficiary is not entitled to any Medicare benefits, print **C** in the CODE box.

Half 1.5% levy exemption – number of days

Show at **D** the number of days during the 2008–09 income year for which the beneficiary was entitled to a half Medicare levy exemption.

Medicare levy on income to which no beneficiary is presently entitled

If a trustee is liable to be assessed on that part of the net income of a trust (other than a trust of a deceased person) to which no beneficiary is presently entitled, the trustee may need to pay the Medicare levy.

If a trustee is assessed on part or all of the net income of a trust and is liable to pay tax on all of the income so assessed at the top marginal tax rate, the trustee must pay the Medicare levy at 1.5% of net income.

In other situations, if the net income assessed to the trustee is:

- \$416 or less, no Medicare levy is payable
- \$417 to \$490, the Medicare levy is 10% of the excess over \$416
- more than \$490, the Medicare levy is 1.5% of the net income assessed to the trustee.

For a trust of a deceased person, no Medicare levy is payable on that part of the net income of the trust to which no beneficiary is presently entitled.

Medicare levy on income to which a beneficiary under a legal disability is presently entitled

The trustee must pay the Medicare levy if the trustee is assessed on that part of the trust net income to which a beneficiary who is under a legal disability is presently entitled. The trustee must pay the levy if the levy would have been payable by the beneficiary had that part of the net income been the taxable income of the beneficiary.

The trustee does not pay the Medicare levy on trust net income to which a beneficiary under a legal disability is presently entitled if the trust net income is less than the relevant threshold amount for the Medicare levy as set out in part A of question **M1** in *TaxPack 2009* – either the relevant threshold amount for all other taxpayers or, if eligible, the relevant threshold amount for the pensioner or senior Australians tax offset.

Most trustees do not need to supply any information about the Medicare levy. However, some – see above – need to complete item **62 Medicare levy reduction or exemption** on page 6 of the trust tax return so that either no levy or a reduced levy is charged.

Medicare levy surcharge

If the beneficiary's share of the trust net income to which a trustee is assessed under section 98 exceeds either \$70,000 (if single) or the family surcharge threshold of \$140,000 (plus \$1,500 for each dependent child after the first) – see question **M2** in *TaxPack 2009* – the trustee may be liable for the Medicare levy surcharge (MLS). Include a separate statement showing the details listed below, sign it and attach it to the trust tax return. Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the tax return. The details are:

- trust name
- trust TFN
- beneficiary's name
- beneficiary's TFN
- number of days not liable for MLS
- full name of beneficiary's spouse – if applicable
- spouse's taxable income – if applicable
- number of dependent children – if applicable
- health insurer identification (ID) code – if applicable
- membership number – if applicable
- type of cover – if applicable: **General** (also known as 'extras'), **Hospital** or **Combined** hospital and ancillary cover.

The definition of dependant for the purposes of MLS differs from the definition of dependant for other tax purposes. The beneficiary's taxable income and their spouse's taxable income for MLS purposes must be calculated ignoring the exemption under section 271-105 of Schedule 2F to the ITAA 1936 for distributions on which FTDT has been paid. For more information about the circumstances in which FTDT is payable, see page 26.

STATEMENTS OF DISTRIBUTION

63 STATEMENT OF DISTRIBUTION

P

The distribution statement must show only Australian source income or loss, as shown at item **20 Net Australian income or loss** on the partnership tax return.

If the following persons or entities are partners and the partnership claimed a deduction in respect of a LIC capital gain amount, the partnership must advise these partners of their share of the deduction claimed:

- non-resident individual
- trustee of a trust
- trustee of a superannuation entity
- company (including a life insurance company)
- partnership.

Show the distribution of the net Australian income or loss on each partner's own tax return at the following:

Individual

- item **13 Partnerships and trusts** (this item is in the supplementary section of the *Tax return for individuals 2009*)

Company

- item **6 Calculation of total profit or loss**

Trust

- item **8 Partnerships and trusts**, except for distributions of income subject to foreign resident withholding, which are shown at item **5 Business income and expenses**.

Do not show capital gains, attributed foreign income, foreign source income or foreign income tax offsets on the distribution statement. Record and distribute these separately, keeping details for your records.

Include this income or offset on each partner's own tax return at the following:

Individuals

- item **18 Capital gains**
- item **19 Foreign entities**
- item **20 Foreign source income and foreign assets or property**
- ☒ **Foreign income tax offsets** item **20**

Companies

- item **7 Reconciliation to taxable income or loss**
- **Calculation statement**, ☒ **Foreign income tax offsets**

Trusts

- item **21 Capital gains**
- item **22 Attributed foreign income**
- item **23 Other assessable foreign source income**.

For more information on capital gains, see the *Guide to capital gains tax 2009*.

If the number of partners exceeds five

For paper tax returns, if the total number of partners is more than five, list the details in each column as requested for four of the partners. Summarise the distributions to the rest of the partners and include this as the fifth line.

On the fifth line print **SUMMARY** in column 1 and show the senior partner's address instead of the partner's address. In the other columns show summarised totals for the additional partners.

Attach a list to the partnership tax return showing the details of each additional partner in the same format as the statement of distribution. Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the tax return.

Completing the statement of distribution

Column 1

Show the full name and TFN of each partner. If the TFN is not shown, show the partner's address for the service of notices. If the partner is a trustee show the name and TFN of the trust.

Column 2

Show each partner's share of income in whole dollars only – separated into primary production income and non-primary production income. If a loss is distributed print **L** after the amount.

Column 3

Show each partner's share of credit for amounts withheld where an ABN was not quoted. Show whole dollars only. The total of column 3 equals the sum of any credit claimed at:

- **T** Tax withheld where ABN not quoted item 6, and
- **M** Share of credit for tax withheld where ABN not quoted item 8.

Column 4

Show each partner's share of franking credits for franked dividends. The total of column 4 must equal the sum of franking credits claimed at:

- **D** Share of franking credit from franked dividends item 8, and
- **M** Franking credit item 12.

Column 5

Show each partner's share of credit for amounts withheld from payments of interest, dividends and unit trust distributions by investment bodies because the recipient did not quote a TFN. The total of column 5 must equal the sum of TFN amounts withheld on interest, dividends and unit trust distribution at:

- **E** Share of credit for TFN amounts withheld from interest, dividends and unit trust distributions item 8
- **I** TFN amounts withheld from gross interest item 11
- **N** TFN amounts withheld from dividends item 12.

Column 6

Show each partner's share of credit for amounts withheld under foreign resident withholding. Show whole dollars only. The total of column 6 must equal the total amount of credit shown on the tax return at **U** Credit for tax withheld – foreign resident withholding item 6 and **U** Share of credit for tax withheld from foreign resident withholding item 8.

Column 7

Show each partner's share of Australian franking credits that were attached to franked dividends received from a New Zealand company either directly or indirectly through another partnership or trust.

This amount is not necessarily the total amount that can be claimed by each partner. This is because under section 220-405 of the ITAA 1997, each partner's share of franking credits should be reduced by the amount of any share of supplementary dividend paid by the New Zealand company if:

- the supplementary dividend was paid in connection with the franked dividend, and
- the partner is entitled to a foreign income tax offset because the franked dividend is included in their assessable income. For more information, see **appendix 1**.

If the above conditions exist, the reduction should be made on the partner's own tax return.

Column 8

Show each partner's share of net small business entity income. Show whole dollars only. The total of column 8 must equal the amount shown on the tax return at **E** Net small business entity income item 60.

Column 9

Show each partner's share of the NRAS tax offset. The total of the amounts shown at column 9 must equal the amount of NRAS tax offset entitlement shown at **F** item 61 on the partnership tax return. Include cents.

Real and effective control of share in partnership income

If a partner aged 18 years or more on the last day of the partnership's income year does not have real and effective control and disposal of part or the whole of their share of partnership net income, the partner pays further tax – see section 94 of the ITAA 1936.

Real control depends on the constitution and control of the partnership and the conduct of its operations. Broadly, there is a lack of real control if the partner must allow any part of their share of income to be dealt with in a particular way so that the partner cannot, on their own, deal with it in another way.

Under special circumstances the Commissioner may treat a partner as having real control of a share or part of a share of partnership income. If it is considered that this discretion is exercised, provide full details in support of the request. Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the partnership tax return.

63 STATEMENT OF DISTRIBUTION

T

Is the trust making the distribution a closely held trust?

There are new reporting obligations for 2009 that apply to certain distributions to trustee beneficiaries of a closely held trust, within the meaning of section 102UC of the ITAA 1936.

NOTE

Failure to meet these reporting obligations may result in a liability for trustee beneficiary non-disclosure tax, currently imposed at a rate of 46.5%.

If you are making a distribution to another trust (a trustee beneficiary) you should read all the information in **appendix 12** before answering this question as these reporting obligations may apply to you.

If you are not making a distribution to a trustee beneficiary or if after reading **appendix 12** you do not meet the definition of a closely held trust print **N** for no at **W**.

Do not complete the TB Statement Information section on the distribution statement.

If you print **Y** for yes at **W** you need to complete the beneficiary details (name and TFN for resident trustee beneficiaries and name and address for non-resident trustee beneficiaries) and the TB statement information.

Has the trust received an employment termination payment (ETP) or superannuation lump sum?

Include death benefit ETPs and superannuation lump sums on the distribution statement at **B** in the column showing **Income to which no beneficiary is presently entitled**. The trustee is liable to pay the tax, if any, on these amounts. The amount of tax payable by the trustee depends on the components of the ETP or superannuation lump sum and the extent that the dependants of the deceased benefit from the estate. For more information on ETPs and superannuation lump sums, see page 52.

Has the trust received a listed investment company (LIC) capital gain amount?

If the following persons or entities are beneficiaries and the trust claimed a deduction in respect of a LIC capital gain amount, the trust must advise these beneficiaries of their share of the deduction claimed by the trust for the LIC capital gain amount:

- non-resident individual
- trustee of a trust
- trustee of a superannuation entity
- company (including a life insurance company)
- partnership.

Is a beneficiary presently entitled to a share of the income of a trust?

If resident beneficiaries are presently entitled to a share of the income of a trust and are not under any legal disability, it is the beneficiaries who are assessable on their share of the net income of the trust, not the trustee.

A beneficiary is deemed to be presently entitled to income of a trust if they have an 'indefeasible vested interest' in that income. An indefeasible interest is simply one that cannot be defeated or brought to an end or varied by someone else. A vested interest is one that presently exists. However, it can be either a present right or one that can be enjoyed in the future.

Is the beneficiary not presently entitled to a share of the income of a trust?

Include at item **61**, at the labels to the right of the 'Beneficiary 3' details under **Income to which no beneficiary is presently entitled...**, that part of the net income of the trust at item **26 Total net income or loss** to which no beneficiary is presently entitled and in which no beneficiary has an indefeasible vested interest. This is income that is being accumulated within the trust.

The trustee also prints **Y** for yes at the item **Is any tax payable by the trustee?** on page 1 of the trust tax return.

Except for deceased estates in the year in which the deceased died and the following two income years – which are taxed at the general individual rates – a trustee is assessable under section 99A of the ITAA 1936 and is liable to pay tax at the maximum rate of personal income tax on income to which no beneficiary is presently entitled. The Commissioner has a discretion not to apply this provision to a trust that:

- resulted from the will or intestacy of a deceased person
- consists of property either of a bankrupt vested in the official receiver in bankruptcy or that is being administered under Part XI of the *Bankruptcy Act 1966* (as amended)

- consists of property that was transferred to the trustee for the benefit of the beneficiary
 - by way of, or in satisfaction of a claim for, damages for loss of parental support, personal injury, disease, or physical or mental impairment
 - by way of workers or criminal injury compensation
 - directly as a result of the death of a person and from the proceeds of a life assurance policy, a superannuation fund or an employer of the deceased person
 - out of a public fund established and maintained exclusively for the relief of persons in necessitous circumstances
 - as a result of a family breakdown.

If this discretion is exercised, the trustee is not liable to pay tax at the maximum rate of personal income tax on the income to which no beneficiary is presently entitled. Instead, the trustee pays tax at progressive or shaded-in rates. For trusts – other than for the first three years for deceased estates which are taxed at the general individual rates – these shaded-in rates are shown in **table 12**:

TABLE 12

Share of net income (\$)	Tax on column 1 (\$)	% on excess (marginal rate)
416	Nil	50
594	89	15*
34,000	5,100	30
80,000	18,900	40
180,000	58,900	45

*Income in the following range \$595–\$34,000 is taxed at a flat rate of 15%.

If you would like the Commissioner's discretion to be exercised, submit full details in support of the request, together with:

- 1 details of the balance sheet capital accounts
- 2 if shares are held in private companies and special rights attach directly or indirectly to those shares, a statement showing the name of the company, the class and paid-up value of the shares, details of the special rights, and whether those rights have been exercised during the year
- 3 if a loan has been made to or by the trust, a statement showing the nature of the debt, the terms of the loan and the borrower's or lender's full name, address and family relationship, if any, to the beneficiaries. To obtain the Commissioner's discretion, this information need not be furnished for public securities, debentures in public companies and loans made in normal commercial transactions where the parties are at arm's length. If relatives of the beneficiaries or other persons not at arm's length have made loans to a private company in which the trust holds shares, or to a partnership in which the trustee is a partner, full details must also be given for such loans

- 4 if a person, other than in a purely commercial transaction at arm's length, has directly or indirectly transferred money or property to the trust, conferred benefits on the trust or conferred special privileges on the property of the trust, the full name and address of the person and the family relationship, if any, of that person to the beneficiaries
- 5 the names of any other trusts to which the person in 3 or 4 has contributed in the ways mentioned in those sub-paragraphs or in which the beneficiaries of the trust lodging this tax return are interested
- 6 details of property which has been transferred to a trust by a relative of the beneficiaries, and income from that property which must or may be used to pay for that property.

You do not need to provide the information required under 2 to 6 if it has already been sent in an application for exercise of the Commissioner's discretion for income included on an earlier income year's tax return. However, you must submit a statement advising whether or not any material changes have occurred since the information was furnished if the discretion is exercised for any income on the current tax return.

Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the trust tax return.

Capital gains reduced by the CGT discount and/or the small business 50% reduction where no beneficiary is presently entitled

If the trustee is assessable under section 99A of the ITAA 1936 on net income, capital gains included in that part of the trust's net income are not eligible for the CGT discount and the small business 50% reduction (see section 115-225 of the ITAA 1997).

If the trust's net income to which no beneficiary is presently entitled includes a capital gain to which either the CGT discount or the small business 50% reduction has been applied, work out the amount assessable to the trustee under section 99A as if the part attributable to the capital gain was double the amount it actually is.

If the trust's net income to which no beneficiary is presently entitled includes a capital gain to which both the CGT discount and the small business 50% reduction have been applied, work out the amount assessable to the trustee under section 99A as if the part attributable to the capital gain was four times the amount it actually is.

Attach a separate statement to the trust tax return showing details of the amount assessable under section 99A using the above method.

Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the tax return.

Is the trust a deceased estate?

For the first three trust tax returns of a trust created as a result of the death of a person, the income to which no beneficiary is presently entitled is taxed to the trustee at general individual tax rates, with the benefit of the full tax-free threshold of \$6,000.

Thereafter, this income reverts to being taxed at rates of tax as shown in **table 13.1** on page 125, if the Commissioner's discretion is exercised.

If the Commissioner's discretion is to be exercised for a deceased estate, provide the information about the deceased person as described in **2** to **6** on the previous page.

Completing item 63

The total of the income – **N**, **A**, **B**, **F**, **G** and **H** on this statement – equals the amount at item **26 Total net income or loss** – except in the case of certain ETPs, as covered on page 52 and in the case where a beneficiary's or a trustee's share of franking credits at **N** has been reduced because of an entitlement to a foreign income tax offset.

If part of a distribution is not taxable to either the trustee or a beneficiary – for example, the distribution to a non-resident beneficiary includes dividends, interest or royalties on which withholding tax has been paid/withheld, franked dividends, or a distribution to a foreign resident which requires an Australian managed investment trust to withhold an amount, attach a statement highlighting this, including the information outlined at **Non-resident beneficiaries** on page 65.

A trust cannot distribute an overall trust loss.

If the number of beneficiaries exceeds three

For paper tax returns, if there are more than three beneficiaries list the details at the appropriate labels in the distribution statement for two of the beneficiaries. The distributions to the remainder must be summarised and shown against the labels underneath the **Beneficiary 3** name and address box.

In the **Beneficiary 3** name and address details print **SUMMARY** and show the trustee's address instead of the beneficiary's address. Show summarised totals for the additional beneficiaries against the labels underneath.

Attach a list to the trust tax return showing the details of each additional beneficiary in the same format as the statement of distribution. If any of the additional beneficiaries are trustee beneficiaries and the trust is required to make a TB statement, include the additional TB Statement Information in the attachment. Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the tax return.

Beneficiary details

Beneficiary 1, Beneficiary 2, Beneficiary 3

Show the full name and TFN of each beneficiary entitled, presently entitled or having an indefeasible and vested interest. If the TFN is not shown, show the beneficiary's address for the service of notices. If the beneficiary is a trustee of another trust, show the name and TFN of the trust.

NOTE

If you are required to make a TB statement you will need to provide the following details for each trustee beneficiary:

- For resident trustee beneficiaries:
 - name and TFN of trustee beneficiary
- For non-resident trustee beneficiaries:
 - name and address of trustee beneficiary.

Date of birth

If the beneficiary is under 18 years of age at 30 June 2009, show their date of birth.

Assessment calculation code V

Insert an assessment calculation code from **appendix 13** for each beneficiary presently entitled to a share of the income of the trust, and also for income to which no beneficiary is presently entitled and in which no beneficiary has an indefeasible vested interest.

Bankrupt estates are lodged under assessment calculation code 37.

Credit for tax withheld – foreign resident withholding L

Show each beneficiary's share of credit for tax withheld where income is subject to foreign resident withholding. Show whole dollars only. The total of the amounts at **L** must equal the total amount of credit shown on the tax return at **U Credit for tax withheld – foreign resident withholding** item 6 and **U Share of credit for tax withheld from foreign resident withholding** item 8.

Credit for tax withheld – managed investment trust fund payments O

Show each beneficiary's share of credit for tax withheld where the income is subject to managed investment trust fund non-final withholding tax. Show whole dollars only. The total of the amounts at **O** must equal the total amount of credit shown on the tax return at **V Share of credit for tax withheld from managed investment trust fund payments** item 8.

Australian franking credits from a New Zealand company **N**

If the resident beneficiaries are presently entitled to a share of the income of the trust and are not under any legal disability, the beneficiaries – not the trustee – are assessed on their share of the net income of the trust. For more information on present entitlement, see **Is a beneficiary presently entitled to a share of the income of a trust?** under **63 Statement of distribution (trusts)** on page 78.

Include at **N** the beneficiary's share of the Australian franking credit received from a New Zealand company, including any amounts received through another trust or a partnership. The amount at **N** is not necessarily the amount that can be claimed by each beneficiary.

If the beneficiary is under a legal disability or it is income to which no beneficiary is presently entitled and in which no beneficiary has an indefeasible vested interest, the trustee will be assessed on the income. In these circumstances, include at **N** the amount of Australian franking credits attached to a New Zealand dividend allowed to the trustee. Under section 220-405 of the ITAA 1997, the Australian franking credits are reduced by the relevant part of the supplementary dividend paid by the New Zealand company if:

- the supplementary dividend was paid in connection with the franked dividend
- the beneficiary under a legal disability or trustee is entitled to a foreign income tax offset because the franked dividend is included in their assessable income. For more information, see **appendix 1**.

Share of income **A and **B****

Show each beneficiary's share of income in whole dollars only – separated into primary production income and non-primary production income. If a loss is distributed print **L** in the box after the amount.

A loss is only shown for a component – that is, primary production or non-primary production – of an overall trust distribution. The trust cannot distribute an overall trust loss.

Credit for tax withheld where ABN not quoted **C**

Show each beneficiary's share of credit for tax withheld where an ABN was not quoted. Show whole dollars only. The total of **C** amounts equals the sum of any credit shown on the trust tax return at:

- **T** Tax withheld where ABN not quoted item 6
- **C** Share of credit for tax withheld where ABN not quoted item 8.

Franking credit **D**

Show each beneficiary's share of franking credits for franked dividends. The total of **D** amounts must equal the sum of franking credits claimed on the trust tax return at:

- **D** Share of franking credit from franked dividends item 8
- **M** Franking credit item 12.

TFN amount withheld **E**

Show each beneficiary's share of credit for tax withheld on interest, dividends and unit trust distributions by investment bodies as a result of the requirement to quote a TFN. The total of **E** amounts must equal the sum of TFN amounts withheld on interest, dividends and unit trust distributions at:

- **E** Share of credit for TFN amounts withheld from interest, dividends and unit trust distributions item 8
- **I** TFN amounts withheld from gross interest item 11
- **N** TFN amounts withheld from dividends item 12.

If the trust has no net income, the beneficiaries do not have a share of credit for the TFN amounts withheld. Instead, show the sum of the TFN amounts at **E** under **Income to which no beneficiary is presently entitled**.

Net capital gain **F**

Show each beneficiary's share of net capital gain in whole dollars only. The total of **F** amounts must equal the amount at **A Net capital gain** item **21**. To complete their own tax returns and meet their capital gains tax obligations, beneficiaries need the following information:

- 1 a dissection of the net capital gain distributed by the trust for the income year to the extent that it comprises an amount attributable to the following:
 - capital gains from collectables, for each of the following methods of calculation:
 - indexation
 - CGT discount
 - other method
 - capital gains to which the small business 50% active asset reduction was applied, for each of the following methods of calculation:
 - indexation
 - CGT discount
 - other method
 - all other capital gains, for each of the following methods of calculation:
 - indexation
 - CGT discount
 - other method
- 2 details of any non-assessable payment made in the income year in respect of an interest in the trust (CGT event E4 section 104-70 of the ITAA 1997). The details should indicate the extent to which the payment is attributable to each of the following
 - tax-exempted amounts (subsection 104-71(1) of the ITAA 1997)
 - tax-free amounts (subsection 104-71(3) of the ITAA 1997)
 - CGT concession amounts (subsection 104-71(4) of the ITAA 1997)
 - tax-deferred amounts – associated with the small business 50% active asset reduction, frozen indexation, building allowance and accounting difference in income.

To help a trustee record the information required under 1, see **worksheet 5** on page 91.

For information about the small business concessions, see the electronic publication *Capital gains tax (CGT) concessions for small business – overview* available on our website. For more information about capital gains tax, see the *Guide to capital gains tax 2009*.

Attributed foreign income **G**

Show each beneficiary's share of attributed foreign income in whole dollars only. The total of **G** amounts must equal the sum of any attributed foreign income shown at item **22 Attributed foreign income** on the trust tax return.

Other assessable foreign source income **H**

Show each beneficiary's share of other assessable net foreign source income in whole dollars only. The total of **H** amounts must equal the amount of net foreign source income shown at **V Net** item **23** on the trust tax return.

Foreign income tax offsets **I**

Show each beneficiary's share of foreign income tax offsets. The total of **I** amounts must equal the amount of foreign income tax offsets shown at **Z Foreign income tax offsets** item **23** on the trust tax return.

Share of National Rental Affordability Scheme tax offset **R**

Show each beneficiary's share of the NRAS tax offset. The total of the amounts shown at **R** must equal the amount of NRAS tax offset entitlement shown at **F** item **61** on the trust tax return. Include cents.

ENTREPRENEURS' TAX OFFSET INFORMATION **T**

Share of net small business entity income **M**

Show each beneficiary's share of net small business entity income. The total of all the label **M** amounts must equal the amount of net small business entity income shown at **E Net small business entity income** item **60** on the trust tax return.

NON-RESIDENT BENEFICIARIES – ADDITIONAL INFORMATION **T**

Tax Laws Amendment (2007 Measures No. 3) Act 2007 amended Division 6 of the ITAA 1936 to extend the taxation of trustees to situations where a non-resident trustee beneficiary is presently entitled to income of the trust.

Under Division 6, a trustee will be liable to pay tax in relation to:

- shares of net income of non-resident companies and individual beneficiaries not being trustees. Both these amounts are shown at s98(3) assessable amount **J**.
- share of net income of a trust where a beneficiary who is presently entitled to the income of the trust is itself a trustee and is a non-resident at the end of the income year. These amounts are shown at s98(4) assessable amount **K**.

s98(3) assessable amount

Non-resident company beneficiaries – assessable amount J

If you have entered assessment calculation code 139 (non-resident company beneficiaries) at **V**, you must include an amount at **J**. Do not include at **J** any amounts from managed investment trust fund distributions that have been subject to non-final withholding under Subdivision 12H in Schedule 1 to the TAA 1953. If all of the distribution to the beneficiary consists of such amounts you must show a zero at **J**.

Show the assessable amount under section 98 of the ITAA 1936 if the trustee is assessable on behalf of a non-resident company beneficiary on a share of the net income of the trust. Show whole dollars only. Generally, for beneficiaries who have been non-residents for the entire year, the assessable amount will exclude income subject to withholding tax (unfranked dividends, interest and royalties), fully franked dividends, and distributions to a foreign resident which require an Australian managed investment trust to withhold an amount, but will include all other Australian source income, including capital gains. Do not include any capital gains for which the trustee is not liable to pay tax under Subdivision 855-A of the ITAA 1997.

If the share of the net income assessed to the trustee under subsection 98(3) includes a discounted capital gain made by the trust estate, the assessable amount includes double the discounted capital gain (see section 115–220 of the ITAA 1997). This ensures that a trustee assessed on behalf of a non-resident company beneficiary does not get the benefit of the CGT discount. Do not include the capital gain in the assessable amount if the gain is one for which the trustee is not liable to pay tax under Subdivision 855-A of the ITAA 1997.

If the beneficiary is a non-resident at the end of the year and has not been a non-resident for the entire year, show clearly in a separate schedule full details of the share of net income for the year. The amount to show at **J** will include the additional capital gain amount under section 115–220, the beneficiary's share of net income from the trust attributable to the period that the beneficiary was a resident as well as the beneficiary's share of the net income attributable to Australian sources for the period the beneficiary was a non-resident. It will not include income subject to withholding tax (unfranked dividends, interest and royalties), and fully franked dividends. Do not include any capital gains for which the trustee is not liable to pay tax under Subdivision 855-A of the ITAA 1997.

Non-resident individual beneficiaries assessable amount J

If you have entered assessment calculation code 138 (non-resident individual beneficiaries) at **V**, you must include an amount at **J**. Do not include at **J** any amounts from managed investment trust fund distributions that have been subject to non-final withholding under Subdivision 12H in Schedule 1 to the TAA 1953. If all of the distribution to the beneficiary consists of such amounts you must show a zero at **J**.

Show the assessable amount under section 98 of the ITAA 1936 if the trustee is assessable on behalf of a non-resident individual beneficiary not under a legal disability on a share of the net income of the trust. Show whole dollars only. Generally, for non-resident beneficiaries who have been non-resident for the entire year, the assessable amount will not include income subject to withholding tax (unfranked dividends, interest and royalties), fully franked dividends, and distributions to a foreign resident which requires an Australian managed investment trust to withhold an amount, but will include all other Australian source income, including capital gains. Do not include any capital gains for which the trustee is not liable to pay tax under Subdivision 855-A of the ITAA 1997.

If the beneficiary is a non-resident at the end of the year but has not been a non-resident for the entire year, you will have printed **Y** at **A** item **29**. It is important to provide the information set out at **Non-resident beneficiaries** on page 65 so that the appropriate tax rates can be applied.

The amount to show at **J** will include the beneficiary's share of net income from the trust attributable to the period that the beneficiary was a resident as well as the beneficiary's share of net income attributable to Australian sources for the period the beneficiary was a non-resident. It will exclude income subject to non-resident withholding tax and fully franked dividends. Do not include any capital gains for which the trustee is not liable to pay tax under Subdivision 855-A of the ITAA 1997.

s98(4) assessable amount

Non-resident trustee beneficiaries – assessable amount K

If you have entered assessment calculation code 140 (non-resident trustee beneficiary) at **V**, you must include an amount at **K**. Do not include at **K** any amounts from managed investment trust fund distributions that have been subject to non-final withholding under Subdivision 12H in Schedule 1 to the TAA 1953. If all of the distribution to the beneficiary consists of such amounts you must show a zero at **K**.

Any amounts reported at **K** should not be included at labels **P** or **Q** (TB statement).

Show the assessable amount under section 98 of the ITAA 1936 if the trustee is assessable on behalf of a non-resident trustee beneficiary on a share of the net income of the trust. Show whole dollars only. It only includes income attributable to Australian sources. It will not include income subject to withholding tax (unfranked dividends, interest and royalties), fully franked dividends, and distributions to a foreign resident which require an Australian managed investment trust to withhold an amount, but will include all other Australian source income, including capital gains. Do not include any capital gains for which the trustee is not liable to pay tax under Subdivision 855-A of the ITAA 1997.

If the trustee is assessable on behalf of a non-resident trustee under section 98 of the ITAA 1936 and the share of the net income assessed to the trustee includes a discounted capital gain made by the trust estate, the assessable amount includes double the discounted capital gain. This ensures that a trustee assessed on behalf of a non-resident trustee beneficiary does not get the benefit of the CGT discount. Do not include the capital gain in the assessable amount if the gain is one for which the trustee is not liable to pay tax under Subdivision 855-A of the ITAA 1997.

TRUSTEE BENEFICIARY (TB) STATEMENT INFORMATION

If you are not making a TB statement, please print **N** for no.

If you are unsure whether you need to make a TB statement you need to read **appendix 12**.

If you are making a TB statement, please print **Y** for Yes for this trustee beneficiary. Then:

- At label **P** show any tax-preferred amounts to which the trustee beneficiary is presently entitled. If there are no tax-preferred amounts, please show a zero at label **P**.
- At label **Q** show any untaxed part of a share of net income of the trustee beneficiary. If there is no untaxed part of a share of net income, please show a zero at label **Q**.

For more information about how to complete label **P** and **Q**, and the definitions of 'tax-preferred amounts' and 'untaxed part of a share of net income', read **appendix 12**.

NOTE

Beneficiary details

To make a correct TB statement you need to ensure you have also completed the beneficiary information:

- For resident beneficiaries show the name and TFN of the trustee beneficiary
- For non-resident beneficiaries show the name and address of the trustee beneficiary.

If there are more than three beneficiaries, ensure that the details required to make a correct TB statement are provided in the attachment for each trustee beneficiary.

If you are required to make a TB Statement, and you do not do so in the specified period, you may be liable to pay trustee beneficiary non-disclosure tax. The specified period for lodgment of the TB statement is the due date of the trust's tax return, or a further period allowed by the Commissioner. For more information refer to **appendix 12**.

64 BENEFICIARY UNDER LEGAL DISABILITY WHO IS PRESENTLY ENTITLED TO INCOME FROM ANOTHER TRUST T

The trustee is liable to pay tax on the share of net income of the trust to which a beneficiary who is under 18 years of age is presently entitled. Where the beneficiary is presently entitled to income from more than one trust, the beneficiary's share of net income from each of the trusts is taken into account in working out the tax rate to apply in the trustee's assessment on behalf of the beneficiary. For more information on the tax rates and relieving provisions, see **appendix 11**.

Where the beneficiary is presently entitled to income from one or more other trusts, give the following information for each of those trusts:

- name of the trust
- tax office at which the trust tax return is lodged
- trust TFN
- income to which the beneficiary is presently entitled.

If a trustee is unable to provide any part of this information, they must provide all the available details together with the name and address of the parent or guardian of the beneficiary.

65 NON-RESIDENT TRUST T

A trust is a non-resident of Australia if:

- no trustee was resident in Australia, and
- the central management and control of the trust was not in Australia at any time during the income year.

A trust which is a unit trust will be a non-resident trust if at **no time** during the income year:

- any property of the unit trust was located in Australia, or
- the trustee carried on business in Australia **and**
- the central management and control of the unit trust was located in Australia, or
- one or more persons who were non-residents held more than 50% of the beneficial interests in the income or the property of the unit trust.

If the trust is a non-resident trust, print **Y** for yes. If not print **N** for no.

If the trust is a non-resident trust, show in the box marked **\$** at this item the amount of income derived outside Australia to which no beneficiary is presently entitled. Print **NIL** if applicable.

DECLARATIONS

For a partnership, one of the partners must sign and date the declaration and all attached documents. For a trust, the trustee or public officer must sign and date the declaration and all attached documents.

Hours taken to prepare and complete this tax return

We are committed to reducing the costs involved in complying with your taxation obligations. By completing this item you will help us to monitor these costs as closely as possible. Your response to this item is voluntary.

When completing this item consider the time, rounded up to the nearest hour, that your business spent:

- reading the instructions
- collecting the necessary information to complete this tax return
- making any necessary calculations
- actually completing this tax return or putting the tax affairs of your business in order so that the information could be handed to your tax agent.

The answer should relate to the time the partners or trustee and tax agent spent in preparing and completing the tax return. This includes the time spent by any other person whose assistance was obtained in doing this, such as an employee.

TAX AGENTS

If you are preparing this tax return on behalf of your client, include your time and a reliable estimate of their time.

Tax agent's declaration

If the tax agent is a partnership or a company, this declaration is signed in the name of that partnership or company by a person who is registered as a nominee of that partnership or company. Print that person's name at this item also.

WORKSHEETS

Worksheet 1: Reconciliation statement

Reconciliation items are those items that reconcile net profit or loss shown on the profit and loss statement (the accounts) with the net income or loss for income tax purposes of the partnership or trust. This statement is not an exhaustive list of reconciliation adjustments.

	Primary production income \$	Non-primary production income \$
A Net profit or loss in the accounts	<input type="text"/> // <input type="text"/>	<input type="text"/> // <input type="text"/>
Additions:		
B Income reconciliation adjustments – see below	<input type="text"/> // <input type="text"/>	<input type="text"/> // <input type="text"/>
C Expense reconciliation adjustments – see page 41	<input type="text"/> // <input type="text"/>	<input type="text"/> // <input type="text"/>
D Net income or loss from business (A + B + C)	<input type="text"/> // <input type="text"/>	<input type="text"/> // <input type="text"/>

Note: The additions at **B** and/or **C** may be negative amounts which will reduce the net income or loss.
The amounts shown for net income at **D** must agree with **Q** and **R** item **5** on the tax return.

Income reconciliation adjustments

Income add backs: amounts not shown in the accounts which are assessable income

E Assessable balancing adjustment amounts on depreciating assets	<input type="text"/>	<input type="text"/>
F Any excess of the tax value of closing stock over the tax value of opening stock (non-small business entities – see page 68)	<input type="text"/>	<input type="text"/>
G Other assessable income not included in the accounts	<input type="text"/>	<input type="text"/>
H Subtotal (E + F + G)	<input type="text"/>	<input type="text"/>

Income subtractions: income shown in the accounts which is not assessable

I Profit on the sale of depreciating assets shown in the accounts	<input type="text"/>	<input type="text"/>
J Personal services income included in the assessable income of an individual (attributed amount)	<input type="text"/>	<input type="text"/>
K Other income shown in the accounts which is not assessable for tax purposes – for example, gross exempt income	<input type="text"/>	<input type="text"/>
L Total H – (I + J + K)	<input type="text"/> // <input type="text"/>	<input type="text"/> // <input type="text"/>

Note: The net total of the primary production and non-primary production amounts at **L** must agree with the amount shown at **Reconciliation items, A Income reconciliation adjustments** item **5** on the tax return. If the net total is a negative amount, print **L** in the box at the right of **A** on the tax return.

Expense reconciliation adjustments

Expense add backs: expenses shown in the accounts which are not tax deductible

	Primary production income \$	Non-primary production income \$
M Depreciation charged in accounts*	<input type="text"/>	<input type="text"/>
N Loss on the sale of depreciating assets	<input type="text"/>	<input type="text"/>
O Other items not allowable as a deduction:	<input type="text"/>	<input type="text"/>
<ul style="list-style-type: none"> ■ capital expenditure ■ additions to provisions and reserves ■ debt deductions denied by thin capitalisation provisions ■ income tax expense ■ certain expenses relating to personal services income that are not deductible ■ hire purchase payments ■ luxury car lease payments ■ penalties and fines ■ part of prepaid expenses not deductible this year ■ expenses relating to exempt income ■ other non-deductible expenses 		
P Subtotal (M + N + O)	<input type="text"/>	<input type="text"/>

Expense subtractions: items not shown as expenses which are tax deductible

Q Deduction for decline in value of depreciating assets (for taxpayers not using the small business entity depreciation rules)	<input type="text"/>	<input type="text"/>
R Deductible balancing adjustments amounts on depreciating assets	<input type="text"/>	<input type="text"/>
S Any excess of the tax value of opening stock over the tax value of closing stock (non-small business entities – see page 68)	<input type="text"/>	<input type="text"/>
T Other tax deductible items:	<input type="text"/>	<input type="text"/>
<ul style="list-style-type: none"> ■ other amounts deductible under the uniform capital allowance system ■ hire purchase agreements – interest component ■ luxury car leases – accrual amount ■ part of prepaid expenses deductible this year but not shown in accounts ■ 20% write off of capital expenditure to terminate lease or licence** ■ other deductible items 		
U Total*** P – (Q + R + S + T)	<input type="text"/>	<input type="text"/>

* Only include amounts at **M** if the partnership or trust is not using the small business entity depreciation rules. However, exclude any small business pool deductions shown at **Expenses, K Depreciation expenses** item **5** on the tax return.

** If the partnership or trust has incurred capital expenditure to terminate a lease or licence the partnership or trust may be entitled to claim a deduction for 20% of this expenditure if the requirements of section 25-110 of the ITAA 1997 are satisfied.

*** The net total of the primary production and non-primary production amounts at **U** must agree with the amount shown at **Reconciliation items, B Expense reconciliation adjustments** item **5** on the tax return. If the net total is a negative amount, print **L** in the box at the right of **B** on the tax return.

Worksheet 2: Distribution of income from other partnership and trusts

Name of partnership or trust	Primary production income distribution from a partnership	Primary production income distribution from a trust	Deduction from primary production income distribution	Non-primary production income distribution from a partnership	Non-primary production income distribution from a trust	Deduction from non-primary production income distribution	Share of credit for tax withheld where ABN not quoted	Share of credit for tax withheld under foreign resident withholding	Share of franking credit from franked dividends	Share of credits for tax withheld from managed investment trust fund payments – trusts only	Total share of TFN amounts withheld from interest, dividends and unit trust distributions
Total											

Put the total at A item 8.	Put the total at Z item 8.	Put the total at S item 8.	Put the total at B item 8.	Put the total at R item 8.	Put the total at T item 8.	Put the total at C item 8.	Put the total at U item 8.	Put the total at D item 8.	Put the total at V item 8.	Less withheld TFN amounts already refunded

NOTE:
 You should ensure that distributions from another partnership or trust include the share of any:

- TFN amounts withheld from interest, dividends and unit trust distributions
- franking credits from franked dividends
- amounts withheld where ABN not quoted
- credit for any tax withheld under foreign resident withholding.

Worksheet 3: Interest

Who paid the interest	Branch	Account number	Total TFN amounts withheld from interest	Amount of interest
Total 1				00
Less withheld TFN amounts already refunded 2				
Net TFN amounts withheld from interest – take 2 from 1				
Put the total at I item 11				

Worksheet 4: Dividends

Name of company	Unfranked amount	Franked amount	Franking credit	Total TFN amounts withheld from dividend
	Put the total at K item 12	Put the total at L item 12	Put the total at M item 12	Less TFN amounts already refunded
Net TFN amounts withheld from dividends				
Put the total at N item 12				

Worksheet 5: Distribution of net capital gain from a trust

[illegible]

Note:

A trust advises a beneficiary of their share of a net capital gain in the categories 1 to 6 because a beneficiary needs to gross-up the share of net capital gain to which the trustee applied by multiplying:

- the CGT discount by 2 – before first deducting any capital losses, then the CGT discount
- the small business 50% active asset reduction by 2 – before first deducting any capital losses, then the small business 50% active asset reduction
- the CGT discount and the small business 50% active asset reduction by 4 – before first deducting any capital losses, then the CGT discount and the small business 50% active asset reduction.

A beneficiary needs to decide which order of categories 1 to 6 to use to deduct losses that will give the best result.

For more information about these aspects of capital gains see the *Guide to capital gains tax 2009*.

Worksheet 6: Distribution of foreign income and foreign tax credits

Partner's or beneficiary's name	Tax file number	Net foreign income	Foreign tax credit

APPENDIXES

APPENDIX 1: DIVIDENDS

An imputation system applies for taxing dividends paid by franking entities. Dividends (including non-share dividends) paid by franking entities, which have paid sufficient Australian tax, carry a tax offset entitlement for resident holders. These dividends are known as franked dividends.

Trans-Tasman imputation

The Australian Government has rules, administered by the Tax Office, to allow New Zealand companies to join the Australian imputation system. The New Zealand Government has similar rules, administered by the New Zealand Inland Revenue Department, to allow Australian companies to join the New Zealand imputation system. Subject to full compliance with the Australian imputation rules, a New Zealand company that has chosen to join the Australian imputation system is able to maintain an Australian franking account and may pay dividends franked with Australian franking credits.

For dividends paid by Australian franking companies, the total amount of dividends received or credited and the franking credit is included in the assessable income of the partnership or trust to determine the relevant net income or loss.

For dividends paid by New Zealand franking companies, the amount of the dividend received or credited and the franking credit included in the assessable income of the partnership or trust can vary depending on whether or not the dividend is assessable. See the *Foreign income return form guide* to work out whether the dividend is assessable income.

If the dividend from the New Zealand company is assessable, you must declare it (including any supplementary dividend) as assessable foreign income even if dividend withholding tax was deducted in New Zealand. You can claim a foreign income tax offset for any New Zealand withholding tax paid on the dividend.

If the franked dividend from the New Zealand company is included in assessable income, the amount of the Australian franking credit on that dividend is also assessable income and you can claim a tax offset equal to that amount (subject to the exceptions described below).

If the recipient is entitled to a tax offset under section 207-45, the Australian franking credit is included in the assessable income of the recipient. The tax offset is reduced by the relevant amount of a supplementary dividend paid by the New Zealand company if:

- the supplementary dividend is paid in connection with the franked dividend
- the franked dividend and the supplementary dividend flow indirectly to the recipient because the recipient is a partner in a partnership or a beneficiary or trustee of a trust
- the recipient is entitled to foreign income tax offsets because of the distribution.

NOTE

Australian resident shareholders are not entitled to a tax offset for New Zealand imputation credits which are attached to dividends paid by a New Zealand company. Australian resident shareholders are only entitled to a tax offset for Australian franking credits which are attached to those dividends.

Franking credit trading

For the franking credits to flow through to the partners or beneficiaries, both they and the partnership or trustee must be qualified persons in relation to the dividend.

Qualified person

To be a qualified person in relation to a dividend, a taxpayer must, during the relevant 'qualification period' (see below), hold the shares, or an interest in the shares, at risk for 45 days (90 days for certain preference shares) not counting the days on which the shares or interests were acquired or disposed of. This is sometimes referred to as the 'holding period rule'.

To hold the shares, or an interest in shares, at risk the taxpayer must carry at least 30% of the risks of losses and opportunities for gain associated with the shares, or interest in the shares.

If the taxpayer does not have an obligation to make a payment in relation to a dividend (generally one passing the benefit of the dividend to another), the relevant qualification period for that dividend is the period beginning the day after the relevant shares or interests are acquired, and ending 45 days (90 days for certain preference shares) after the shares go ex-dividend. Otherwise, if the taxpayer is obliged to make, has made or is likely to make a related payment, the relevant qualification period is the period beginning 45 days (90 days for certain preference shares) before the shares go ex-dividend and ending 45 days (90 days for certain preference shares) after the shares go ex-dividend. This is sometimes referred to as the 'related payments rule'.

The holding period rule applies to shares acquired on or after 1 July 1997 – unless acquired under a contract entered into before 7.30pm Australian eastern standard time (AEST) on 13 May 1997 – and the related payments rule applies to arrangements entered into after 7.30pm AEST on 13 May 1997.

T Beneficiaries of trusts, other than family trusts and deceased estate trusts, will not pass these tests unless they hold a sufficient fixed interest in the shares to expose them to at least 30% of the risks and opportunities of owning the shares. They may, however, be eligible for the small shareholder exemption.

As an alternative to complying with the 45-day holding period rule, there are two other methods of attaining 'qualified person' status. The first exempts individual shareholders with total franking credit entitlements of less than \$5,000. The second allows certain taxpayers – including the trustees of listed widely held unit trusts, unlisted very widely held unit trusts, trustees of complying superannuation funds, complying approved deposit funds, pooled superannuation trusts and the statutory funds of life insurance companies – to elect to have a ceiling applied to franking credit entitlements. The ceiling is based on a benchmark portfolio of shares. Certain investment vehicles primarily held by such taxpayers are also included.

The simplified imputation system (SIS) relies on Division 1A of the former Part IIIA of the ITAA 1936 to give effect to the holding period and related payment rules. In determining if a taxpayer is a qualified person and therefore entitled to franking benefits, SIS relies on the provisions contained in Division 1A of the former Part IIIA of the ITAA 1936 as if those provisions had continued to apply.

General anti-avoidance rule

Section 177EA of the ITAA 1936 is a general anti-avoidance rule against franking credit trading and streaming that applies where one of the purposes of an arrangement – other than an incidental purpose – is to obtain a tax advantage in relation to franking credits.

For more information, see *You and your shares 2009*.

Franking credit

The franking credit from franking entities is shown at:

- **M Franking credit** item 12, if received directly from a paying company
- **D Share of franking credit from franked dividends** item 8, if received indirectly through another partnership or trust.

Do not show the franking credit if the trustee or partnership was not a qualified person – see the previous page – for the dividend.

Australian franking credits from a New Zealand company

The Australian franking credits attached to franked dividends received directly or indirectly from a New Zealand franking company are shown at **D Australian franking credits from a New Zealand company** item 23.

For credits received indirectly through another partnership or trust, do not show the franking credit if the trustee or partnership was not a qualified person – see the previous page.

Show expenses claimed against earning dividend income at item **16 Deductions relating to Australian investment income**.

T In certain cases, where no beneficiaries are presently entitled to some or all of the income of the trust, (i.e. that income is not assessable to the beneficiaries), the trustee is liable to pay tax on that income and – providing the trustee is a qualified person in relation to the dividend – is entitled to a tax offset for the amount, or a proportionate amount, of the franking credit. Where the amount of the franking credit to which the trustee is entitled exceeds the trustee's basic income tax liability, the excess will only be refundable if the net income is assessed under section 99.

The share of the partnership's net income or loss distributed to a resident partner, or the share of the trust's net income assessable to a resident beneficiary, is shown on the partner's or beneficiary's own tax return.

If that share includes some or all of the franked dividends paid to the partnership or trust, the partner or beneficiary who is a resident individual is entitled to a tax offset equal to their share of franking credits attached to the franked dividends, undiminished by the expenses of the partnership or trust.

For the franking credits to flow to a partner or beneficiary, both the partner or beneficiary and the partnership or trustee must be qualified persons (satisfying the holding period and related payments rules).

Non-resident partners and beneficiaries

Non-resident partners and non-resident presently entitled beneficiaries are not liable to pay any Australian tax on the franked amount of dividends. Unfranked dividends and the unfranked part of franked dividends, if any, are subject to withholding tax.

Share traders

Traders of shares (including non-share equity interests) who operated as a partnership or trust and received dividends during the income year must show them at item **12 Dividends**.

Exempt dividends

Keep supporting records if the partnership or trust claims that the whole or part of any dividend, bonus share issue or other distribution is exempt from tax – for example, because FTDI has been paid on the amount. For more information, see pages 22 and 26.

Foreign source dividends

Foreign source dividends (other than dividends from a New Zealand franking company) are not subject to the imputation rules. However, they are usually included in the assessable income of the partnership or trust. If the partnership or trust receives foreign source dividends, other than dividends that qualify as non-assessable non-exempt income under sections 23AI and 23AK, include these amounts at item **23 Other assessable foreign source income**.

Unfranked dividends

An unfranked dividend includes the unfranked part of a partly franked dividend.

Dividends or interest paid to non-residents **P**

Interest paid includes amounts in the nature of interest. If the partnership paid or credited any amounts in the nature of interest to a non-resident of Australia or has received unfranked dividends and/or interest on behalf of a non-resident of Australia, attach a statement to the partnership tax return showing the amount paid, credited or received on behalf of the non-resident and whether withholding tax was deducted. If it was not deducted, state why. Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the tax return. For more information on other attachments to the tax return, see page 14.

APPENDIX 2 ROYALTIES

Royalties include considerations of any kind paid or credited for:

- 1 use of, or right to use
 - a) any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right
 - b) industrial, commercial or scientific equipment
 - c) motion picture films
 - d) films or video tapes for use with television
 - e) tapes for use with radio broadcasting
 - f) visual images and or sounds transmitted by satellite, cable, optic fibre or other similar technology, in connection with television or radio broadcasting
 - g) capacity covered by a spectrum licence under the *Radio Communications Act 1992*
- 2 supply of scientific, technical, industrial or commercial knowledge or information
- 3 supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of any property, right, equipment, knowledge or information mentioned in 1a, 1b or 2
- 4 reception of, or the right to receive, visual images and/or sounds transmitted to the public by satellite, cable, optic fibre or similar technology
- 5 total or partial forbearance in respect of the previously listed activities.

Show royalties derived by an Australian resident as income in the normal manner.

Royalties paid by a resident to a non-resident may be subject to withholding tax. The rate for royalties is 30%; however, if there is a double tax agreement, the rate may be reduced to 5% or 10%.

For more information on the definition of royalty, see *Taxation Ruling IT 2660 – Income tax: definition of royalties*.

Record keeping

If the partnership or trust claims a deduction for royalties paid or credited, keep a record of the name and address and the amounts paid or due to each person. If payment was made to a non-resident, keep details on whether or not tax has been paid or an amount withheld to provide for tax payable by the non-resident.

APPENDIX 3 THIN CAPITALISATION

The thin capitalisation provisions reduce certain expenditure (called 'debt deductions') incurred in obtaining and servicing debt where the debt used to finance the Australian operations of a partnership or trust exceeds the limits set out in Division 820 of the ITAA 1997. These rules ensure that taxpayers fund their Australian operations with an appropriate amount of equity.

Do the thin capitalisation rules apply?

- P** Subject to two exclusions listed below, the thin capitalisation rules will apply to a partnership if:
- the partnership has at least one partner which is an Australian resident (an Australian partnership) and either
 - the partnership, or any of its associate entities, is an Australian controller of an Australian controlled foreign entity (explained below) or carries on business overseas at or through a permanent establishment, or
 - that partnership is foreign controlled, either directly or indirectly (see next page), or
 - the partnership does not have any partners that are Australian residents and the partnership carries on business in Australia at or through a permanent establishment or otherwise has assets that produce assessable income.

- T** Subject to two exclusions listed below, the thin capitalisation rules will apply to a trust if the trust is:
- an Australian trust as defined in section 338 of the ITAA 1936, and either
 - the trust, or any of its associate entities, is an Australian controller of an Australian controlled foreign entity (explained below) or carries on business overseas at or through a permanent establishment, or
 - the trust is foreign controlled, either directly or indirectly (see next page), or
 - a foreign resident and carries on business in Australia at or through a permanent establishment or otherwise has assets that produce assessable income.

Exclusions

The thin capitalisation rules will **not** apply if:

- the partnership's or trust's debt deductions (combined with the debt deductions of its associate entities) do not exceed \$250,000 in the income year, or
- in the case of an Australian partnership or an Australian trust which is not foreign controlled, the combined value of the partnership's or trust's Australian assets and the Australian assets of its associates comprise at least 90% of the value of the total assets of the partnership or trust and those associates.

Control

The rules measuring control take into account both direct and indirect interests that the partnership or trust holds in the other entity (or vice-versa), and the direct and indirect interests that associate entities of the partnership or trust hold in the other entity. This means that an Australian partnership or an Australian trust can be an Australian controller of a foreign entity even if it holds a direct interest of less than 50% in the foreign entity. Additionally, an Australian trust is foreign controlled where a foreign entity is in a position to control the trust.

What if the thin capitalisation rules apply?

If the thin capitalisation rules apply to the partnership or trust, or further information is required, see the *Guide to thin capitalisation*, available on our website. If the thin capitalisation rules apply, the partnership or trust must complete the *Thin capitalisation schedule 2009*, unless the partnership or trust was a subsidiary member of a consolidated group at any time during the income year and has completed **Z2 Consolidated subsidiary member** item 2.

Post the completed schedule to:

Australian Taxation Office
PO Box 1365
ALBURY NSW 2640

Thin capitalisation transitional provision

Under the transitional provision – section 820-45 of the *Income Tax (Transitional Provisions) Act 1997* – you can choose to calculate your thin capitalisation position using Australian accounting standards as they existed on 31 December 2004 for *four* consecutive income years beginning on or after 1 January 2005. For more information, see *ATO Practice Statement Law Administration PS LA 2006/12*.

If you choose to use the transitional provision, indicate this choice on the *Thin capitalisation schedule 2009*.

For more information visit our website www.ato.gov.au

What if the thin capitalisation rules are breached?

If the thin capitalisation rules are breached, some of the partnership's or trust's debt deductions may be denied. The amount denied for business income is shown in **B Expense reconciliation adjustments** item 5. If the partnership or trust incurred debt deductions for other types of income – for example, rental income, dividend income or foreign income – the amount of deductions shown at the relevant labels must exclude the debt deductions denied.

APPENDIX 4 COMMERCIAL DEBT FORGIVENESS

If a commercial debt owed by the partnership or trust is forgiven during the income year, apply the net amount of debts forgiven to reduce the partnership's or trust's deductible revenue losses, net capital losses, certain undeducted revenue or capital expenditure and the cost base of CGT assets, in that order.

A debt is commercial if any part of the interest payable on it is or would be an allowable deduction, or would be a deduction if not for some specific exception provision. If interest is not payable, the debt is still a commercial debt if interest, if charged, would have been deductible.

A debt is forgiven if the partnership's or trust's obligation to pay the debt is released or waived or otherwise extinguished other than by payment of the whole debt in cash.

A debt is also forgiven if a creditor assigns it to an associate of the debtor, in certain other circumstances, or if the right to recover it ceases.

Calculation of net forgiven amount

Calculate the net forgiven amount as follows:

- 1 Determine the notional value of the debt. This is usually the lesser of the:
 - value of the debt at the time of forgiveness (assuming the partnership or trust was solvent at the time the debt was incurred and the partnership's or trust's credit-worthiness has not changed from the time the debt was incurred), and
 - sum of the value of the debt at the time the debt was forgiven (based on the above assumptions and assuming that any market variables remain constant) and any amounts allowable as deductions on termination of the debt attributable to changes in market variables. This would occur because of a decrease in value of the debt due to market movements. Special rules apply in calculating the notional value of non-recourse debt and in respect of debt parking circumstances – see sections 245-60 and 245-60 of Schedule 2C to the ITAA 1936.
- 2 Calculate the gross forgiven amount of the debt by deducting from the notional value of the debt any amount of consideration in respect of the forgiveness. This consideration normally is the sum of the amounts of money the partnership or trust is required to pay in respect of the forgiveness or, if property is required to be given, the market value of the property. Special rules apply in determining the consideration given for the forgiveness if a debt is forgiven in exchange for shares, if there are debt parking circumstances, or if money or property is applied for the benefit or at the direction of the creditor – see sections 245-65 and 245-70 of Schedule 2C to the ITAA 1936.

- 3 Reduce the gross forgiven amount by any amount
- which has been, is, or will be, included in the partnership's or trust's assessable income as a result of the forgiven debt
 - by which a deduction otherwise allowable to the partnership or trust has been or will be reduced as a result of the forgiven debt except for a reduction under Division 727 (indirect value shifting) of the ITAA 1997, and
 - by which the cost base to the partnership or trust of any CGT asset has been or will be reduced as a result of the forgiveness of the debt under Part 3-1 or 3-3 of the ITAA 1997.

The balance remaining is the net forgiven amount of that debt.

- 4 Add the net forgiven amount to the net forgiven amounts of other debts forgiven during the income year to arrive at the total net forgiven amount for the income year.

Application of total net forgiven amount

Apply this total net forgiven amount to reduce the amounts the partnership or trust has in the following categories, in the order listed:

- deductible revenue losses
- deductible net capital losses
- deductible expenditure
- cost bases of certain CGT assets.

Within each category, the partnership or trust may choose the loss, item of expenditure or asset against which the total net forgiven amount is applied, provided it is applied to the maximum extent possible within that category. Once the total net forgiven amount is applied against all the amounts in a category, apply any excess against the next category in the above order. If there is an excess remaining after applying the amount to the maximum extent possible against all categories, disregard this excess. However, see the next page for special rules applying in the case of certain partnerships.

Deductible revenue losses

These are tax losses incurred by the partnership or trust in an earlier income year and undeducted at the beginning of the forgiveness year.

Deductible net capital losses

These are unrecouped net capital losses incurred in income years before the forgiveness year.

Deductible expenditure

Deductible expenditure is limited to that incurred before the forgiveness year which remains undeducted but which, on conditions prevailing at the beginning of the forgiveness year, would be deductible in that year or future years.

Deductible expenditure means:

- expenditure deductible under Division 40 – uniform capital allowances – of the ITAA 1997
- expenditure incurred in borrowing money to produce assessable income
- expenditure on scientific research
- expenditure on R&D activities
- advance revenue expenditure
- expenditure on acquiring a unit of industrial property to produce assessable income
- expenditure on Australian films
- expenditure on assessable income-producing buildings and other capital works.

There are two principal methods for reducing deductible expenditures:

- If the deduction is calculated as a percentage of a base amount – for example, deductions for decline in value of depreciating assets calculated under the prime cost method – make the reduction to the base amount. The effect is that deductions allowable in the forgiveness year and later years are reduced. Also, the total amount of deductions allowable is limited to the reduced base amount. The amount of the reduction is treated as if it had been a deduction when calculating any required balancing adjustment amount.
- If the deduction for a particular deductible expenditure is a percentage, fraction or proportion of an amount worked out after taking into account any deductions for the deductible expenditure previously allowed to the partnership or trust – for example, deductions for decline in value of depreciating assets calculated under the diminishing value method – the forgiven amount is taken to have been allowed as a deduction before the forgiveness income year.

If any deductions are disallowed under the ITAA 1936 or the ITAA 1997 as a result of recouping a deductible expenditure, the total net forgiven amount by which the recouped expenditure was previously reduced is treated as assessable income in the year it is recouped.

Cost bases of certain CGT assets

The cost bases of certain CGT assets owned by the partnership or trust at the beginning of the forgiveness year – referred to as reducible assets – may also be reduced by the partnership's or trust's total net forgiven amount. Essentially, these are assets where a capital gain or capital loss might arise on a CGT event, such as a disposal, happening to them.

Assets not treated as reducible assets include those for which a capital gain or capital loss will not arise or is unlikely to arise if a CGT event happens to them – for example, CGT assets acquired before 20 September 1985, trading stock or a personal use asset within the meaning of section 108-20 of the ITAA 1997. Also excluded are CGT assets whose cost is deductible, such as depreciating assets.

The partnership or trust may choose the reducible assets whose cost bases are to be reduced and the extent of that reduction. However, the cost base of reducible assets that constitute investments in associates of the partnership or trust must be reduced last. If a partnership or trust chooses to apply an amount to reduce either the cost base or the reduced cost base of a reducible asset, then at any time from the beginning of the forgiveness income year, each of the relevant cost bases – that is, the cost base or reduced cost base – is taken to be reduced.

Ordinarily, the reduction of a CGT asset's relevant cost base cannot exceed the amount that would have been the reduced cost base of the asset, calculated as if the asset was disposed of at market value on the first day of the forgiveness income year. However, a special rule applies – see subsection 245-190(3) of Schedule 2C to the ITAA 1936 – if an event occurred after the first day of the forgiveness year that would cause the reduced cost base of the asset to be reduced.

The reduction of the relevant cost base of a CGT asset affects the calculation of the amount of the capital gain or capital loss on a CGT event happening to the nominated reducible asset because the relevant cost base that is taken into account in determining the capital gain or capital loss must reflect that reduction.

Special rules



Special rules apply if a partnership – other than a corporate limited partnership – has a total net forgiven amount which cannot be fully applied in reducing its categories of amounts set out above. Any part that cannot be applied in that way is allocated to the partners in the proportion they share in the net income or loss of the partnership. This amount is added to the individual partner's net forgiven amounts in calculating the partner's total net forgiven amount. See Subdivision 245-F of Schedule 2C to the ITAA 1936.

APPENDIX 5 CAPITAL WORKS DEDUCTIONS AND OTHER TAX OFFSETS

Capital works deductions

Division 43 of the ITAA 1997 provides for a system of deducting capital expenditure incurred in the construction of capital works used to produce assessable income.

Capital works

You can deduct construction costs for the following capital works:

- buildings or extensions, alterations or improvements to a building
- structural improvements – such as bridges, retaining walls and sealed roads – or extensions, alterations or improvements to structural improvements
- environmental protection earthworks – see also **appendix 6**.

You must base deductions for construction costs and structural improvements on actual costs incurred. If it is not possible to genuinely determine the actual costs, provide an estimate by a quantity surveyor or other independent qualified person. The costs incurred by the partnership or trust for providing this estimate are deductible as a tax-related expense, not as an expense in gaining or producing assessable income.

Who can claim?

You can only claim a deduction under Division 43 for an income year if the partnership or trust:

- owns, leases or holds part of a construction expenditure area of capital works ('your area')
- incurred the expense, or is an assignee of the lessee or holder who incurred the expense
- uses your area to produce income, or in some cases for carrying on research and development activities.

In calculating the partnership's or trust's deduction, identify your area for each construction expenditure area of the capital works. Your area may comprise the whole of the construction area or part of it.

Lessee or holder of capital works

You can claim a deduction for an area leased or held under a quasi-ownership right by the lessee or holder. To claim a deduction the lessee or holder must have:

- incurred the construction expenditure or be an assignee of the lessee or holder who incurred the expenditure
- continuously leased or held the capital works area itself, or leased or held the area that had been so held by previous lessees, holders or assignees since completion of construction
- used the area to produce assessable income, or in some cases for carrying on research and development activities.

If there is a lapse in the lease the entitlement to the deduction reverts to the building owner.

Requirement for deductibility

A partnership or trust can deduct an amount for capital works in an income year if:

- the capital works have a 'construction expenditure area'
- there is a 'pool of construction expenditure' for that area
- it uses the area in the income year to produce assessable income or for carrying on research and development activities in the way set out in section 43-140 of the ITAA 1997.

No deduction until construction is complete

You cannot claim a deduction for any period before the construction of the capital works is complete even though the partnership or trust used them, or part of them, before completion. Additionally, the deduction cannot exceed the undeducted construction expenditure for your area.

Capital works are taken to have started when the first step in the construction phase starts – for example, the pouring of foundations or sinking of pilings for a building.

Establishing the deduction base

Expenditure for the construction of capital works is deductible if there is a construction expenditure area for the capital works. Whether there is such an area and how it is identified depends on:

- the type of expenditure incurred – only construction expenditure (see below) is deductible under Division 43 of the ITAA 1997
- the time the capital works started
- the area of the capital works to be owned, leased or held by the entity that incurred the expenditure, and
- for capital works begun before 1 July 1997, the area of the capital works that was at the time of completion intended to be used in a particular manner.
See section 43–90 of the ITAA 1997.

Construction expenditure

Construction expenditure includes:

- preliminary expenses such as architect's fees, engineering fees, foundation excavation expenses and costs of building permits
- costs of structural features that are an integral part of the income producing building or income producing structural improvements – for example, lift wells and atriums, and
- some portion of indirect costs.

For an owner/builder entitled to a deduction under Division 43 of the ITAA 1997, the value of their contributions to the work – that is, labour or expertise and any notional profit element – do not form part of construction expenditure. See *Taxation Ruling TR 97/25 – Income tax: property development: deduction for capital expenditure on construction of income producing capital works, including buildings and structural improvements and addendum*.

Construction expenditure does not include expenditure on:

- acquiring land
- demolishing existing structures
- clearing, levelling, filling, draining or otherwise preparing the construction site before carrying out excavation work
- landscaping
- plant
- property or expenditure for which a deduction is allowable or would be allowable if the property were to be used for producing assessable income under another specified provision of the ITAA 1936 or the ITAA 1997.

Construction expenditure area

The construction of the capital works must be complete before the construction expenditure area is determined. A separate construction expenditure area is created each time an entity undertakes the construction of capital works.

For construction expenditure before 1 July 1997, the capital works must have been constructed for a specified use at the time of completion, depending upon the time when the capital works started.

The first specified use construction time was 22 August 1979 – see table 43-90 and subsection 43-75(2) of the ITAA 1997. No deduction is available under Division 43 of the ITAA 1997 for capital works which were begun on 21 August 1979 or earlier – see subsection 43-20(1) of the ITAA 1997.

Pool of construction expenditure

The pool of construction expenditure is the portion of the construction expenditure incurred by an entity on capital works which is attributable to the construction expenditure area.

Deductible use

You can only claim a deduction under this Division if the partnership or trust uses your area in a way described in table 43-140 or 43-145 of Subdivision 43-D of the ITAA 1997.

Special rules about uses

Your area is taken to be used for a particular purpose or manner if:

- it is maintained ready for that use, is not used for another purpose and its use has not been abandoned
- its use has temporarily ceased because of, for example, construction or repairs, or seasonal or climatic conditions.

Your area is not accepted as being used to produce assessable income:

- if it is a building – other than a hotel or apartment building – used or for use wholly or mainly for exhibition or display in connection with the sale of all or part of any building, where construction began after 17 July 1985 but before 1 July 1997. If construction began after 30 June 1997, buildings that are used for display are eligible

- if it is a building – other than a hotel or apartment building – where construction began after 19 July 1982 and before 18 July 1985 and it is used wholly or mainly
 - for, or in association with, residential accommodation, and is not a hotel or apartment building
 - for exhibition or display in connection with the sale of all or part of any building, or the lease of all or any part of any building for use wholly or mainly for, or in association with, residential accommodation and is not a hotel or apartment building or an extension, alteration or improvement to such a building
- to the extent that the company or an associate uses part of it for residential accommodation and it is not a hotel or apartment building – for exceptions to this rule, see subsection 43-170(2) of the ITAA 1997.

Your area is taken to be used wholly or mainly as, or in association with residential accommodation if it is:

- part of an individual's home – other than a hotel or apartment building
- a building (other than a hotel or apartment building) where construction began after 19 July 1982 and before 18 July 1985, and used as a hotel, motel or guest house.

Special rules for hotels and apartments are contained in section 43-180 of the ITAA 1997.

Calculation and rate of deduction

The entitlement to a deduction begins on the date your area is first used to produce assessable income after construction is completed. The first and last years of use may be apportioned. The entitlement to a deduction runs for either 25 or 40 years – the limitation period – depending upon the rate of deduction applicable.

The legislation contains two calculation provisions:

- Section 43-210 of the ITAA 1997 deals with the deduction for capital works which began after 26 February 1992
- Section 43-215 of the ITAA 1997 deals with deductions for capital works which began before 27 February 1992.

Capital works begun before 27 February 1992 and used as described in table 43-140

Calculate the deduction separately for each part that meets the description of your area.

Multiply the construction expenditure by the applicable rate – either 4% if the capital works began after 21 August 1984 and before 16 September 1987 or 2.5% in any other case – and by the number of days in the income year in which the partnership or trust owned, leased or held your area and used it in a relevant way. Divide that amount by the number of days in the year.

Apportion the amount if your area is used only partly to produce assessable income.

The amount claimed cannot exceed the undeducted construction expenditure.

Capital works begun after 26 February 1992

Calculate the deduction separately for each part of capital works that meets the description of your area.

There is a basic entitlement to a rate of 2.5% for parts used as described in table 43-140 – Current year use. The rate increases to 4% for parts used as described in table 43-145 – Use in the 4% manner.

Undeducted construction expenditure

The undeducted construction expenditure for your area is the part of the construction expenditure the partnership or trust has left to write off. Use it to work out the:

- number of years in which the partnership or trust can deduct amounts for its construction expenditure, and
- amount that the partnership or trust can deduct under section 43-40 of the ITAA 1997 if your area or a part of it is destroyed.

Balancing deduction on destruction

If a building is destroyed or damaged during an income year, you can claim the remaining amount of undeducted construction expenditure that has not yet been deducted, less any compensation received. This applies even if the destruction or demolition is voluntary.

You can claim the deduction in the income year in which the destruction occurs.

The deduction is reduced where the capital works are used in an income year only partly for the purpose of producing assessable income or for carrying on research and development activities.

For guidelines on these measures, see Taxation Ruling TR 97/25 and addendum.

Infrastructure borrowings

The previous infrastructure borrowings tax concession, which was introduced in 1992 to facilitate private sector investment in certain publicly accessible infrastructure projects, was closed to new projects from 14 February 1997. The provisions relating to the concession are contained in Division 16L of the ITAA 1936 and Chapter 3 of the *Development Allowance Authority Act 1992*.

The lender's interest and amounts in the nature of interest on infrastructure borrowings are not assessable. Alternatively, the lender may choose to be assessed on the amounts and to claim a tax offset of 30%. The borrower's interest and amounts in the nature of interest on the infrastructure borrowings are not deductible. In addition, any profit on the disposal of an infrastructure borrowings instrument is non-assessable and any loss is non-deductible.

The replacement land transport infrastructure tax offset in Division 396 of the ITAA 1997 is a more restricted concession. It is a tax offset on the taxable interest of a resident lender to an approved infrastructure project. The offset is calculated by applying the general company tax rate to the lender's assessable interest, but may be subject to an upper limit set by the Minister for Infrastructure, Transport, Regional Development and Local Government.

If the lender's interest is subject to a tax offset, the project borrower cannot claim a deduction for a comparable amount of interest.

APPENDIX 6 UNIFORM CAPITAL ALLOWANCES

This appendix refers to the following UCA topics:

- balancing adjustment amounts
- deduction for decline in value of depreciating assets
- deduction for environmental protection expenses
- deduction for project pool
- electricity connections and telephone lines
- grapevines and horticultural plants
- hire purchase agreements
- landcare operations and deductions for decline in value of water facility
- limited recourse debt
- loss on the sale of a depreciating asset
- low-value pools
- luxury car leases
- profit on the sale of a depreciating asset
- section 40-880 deduction.

For more information on any of these topics, see the *Guide to depreciating assets 2009*.

! SMALL BUSINESS ENTITIES

Eligible small business entities that choose to use the simplified depreciation rules calculate deductions for most of their depreciating assets under the specific small business entity depreciation rules – see page 36.

Balancing adjustment amounts

If the partnership or trust ceases to hold or to use a depreciating asset, a balancing adjustment event may occur. For assets subject to the small business entity depreciation rules see **Step 5 Disposal of depreciating assets** on page 38. For assets not subject to these rules, the partnership or trust will need to calculate a balancing adjustment amount to include in its assessable income or to claim as a deduction. Show an assessable balancing adjustment amount as an income add back at

Reconciliation items, A Income reconciliation adjustments item 5. Show a deductible balancing adjustment amount as an expense subtraction at **Reconciliation items, B Expense reconciliation adjustments item 5**.

If the asset was used for both taxable and non-taxable purposes, reduce the balancing adjustment amount by the amount attributable to the non-taxable use. A capital gain or capital loss may arise which is attributable to that non-taxable use.

Show any profit or loss on the sale of a depreciating asset that has been included in the accounts of the partnership or trust as either an income subtraction at **Reconciliation items, A Income reconciliation adjustments item 5** or an expense add back at **B Expense reconciliation adjustments item 5**. See **Profit on the sale of a depreciating asset** on page 108 and **Loss on the sale of a depreciating asset** on page 107.

If a balancing adjustment event occurred to a depreciating asset of the partnership or trust during the income year, you may also need to include an amount at **O item 47 Termination value of intangible depreciating assets** or **W item 48 Termination value of other depreciating assets**.

Deduction for decline in value of depreciating assets

For assets subject to the small business entity depreciation rules, see **Depreciation expenses, Small business entities** on page 36. For assets not subject to the small business entity depreciation rules, the decline in value is generally worked out using either the prime cost or diminishing value method. Both methods are based on the effective life of an asset. For most depreciating assets, the partnership or trust can choose whether to self-assess the effective life or to adopt the Commissioner's determination in *TR 2008/4 – Income Tax: effective life of depreciating assets (applicable from 1 July 2008)*.

The partnership or trust can deduct an amount equal to the decline in value of a depreciating asset for the period that it holds the asset during the income year. However, the deduction is reduced to the extent the asset is used or installed ready for use for other than a taxable purpose.

The decline in value of a depreciating asset costing \$300 or less is its cost (but only to the extent the asset is used for a taxable purpose) if the asset satisfies all of the following requirements:

- It is used predominantly for the purpose of producing assessable income that is not income from carrying on a business.
- It is not part of a set of assets acquired in the same income year that costs more than \$300.
- It is not one of any number of substantially identical items acquired in the same income year that together cost more than \$300.

You can allocate certain assets that cost less than \$1,000 or that have an opening adjustable value of less than \$1,000 to a low-value pool to calculate the decline in value. You cannot allocate assets eligible for the immediate deduction to a low-value pool.

If the partnership or trust is not using the small business entity depreciation rules, show the deduction for decline in value of depreciating assets used in carrying on a business as an expense subtraction at **Reconciliation items, B Expense reconciliation adjustments** item 5.

B Expense reconciliation adjustments item 5.

This amount is often different from the amount of depreciation calculated for accounting purposes shown at **Expenses, K Depreciation expenses** item 5 so you will need to include the amount at **K** as an expense add back at **Reconciliation items, B Expense reconciliation adjustments** item 5.

Show deductions for the decline in value of depreciating assets used to earn rental income, earn interest or dividends or used by the partnership or trust in the management of its tax affairs at **H Other rental deductions** item 9, item 16 **Deductions relating to Australian investment income**, or item 18 **Other deductions**, respectively.

For information about where to show deductions for depreciating assets in a low-value pool see **Low-value pools** on page 107.

Foreign currency gains and losses

If you purchased a depreciating asset in foreign currency, the first element of the asset's cost is converted to Australian currency. From 1 July 2003, if the foreign currency amount became due for payment within the 24-month period that began 12 months before the time when you began to hold the depreciating asset, any realised foreign currency gain or loss (referred to as a forex realisation gain or a forex realisation loss) can modify the asset's cost, opening adjustable value, or the opening balance of your low-value pool (as the case may be).

However, if the foreign currency amount relates to the second element of the cost of a depreciating asset, the translation to Australian currency is made at the exchange rate applicable at the time you incurred the relevant expenditure and a 12-month rule instead of a 24-month rule applies. The 12-month rule requires that the foreign currency became due for payment within 12 months after the time you incurred the relevant expenditure. In some circumstances you may be able to elect that forex gains and losses do not modify the asset's cost, opening adjustable value or the opening balance of your low-value pool. For more information, see *Forex: election out of the 12 month rule* (NAT 9344) on our website.

T If a trust can claim a deduction for the decline in value of a water facility, a grapevine or a horticultural plant, the amount is part of the deduction for the decline in value of depreciating assets included either at **Expenses, K Depreciation expenses** item 5 for small business entities using the simplified depreciation rules, or as an expense subtraction at **Reconciliation items, B Expense reconciliation adjustments** item 5. You will also need to include the amount of a deduction for the decline in value of a water facility at item 55 **Landcare operations and deduction for decline in value of water facility**.

P A partnership cannot claim a deduction for the decline in value of these depreciating assets. Instead the individual partners are usually entitled to claim a deduction.

See **Landcare operations and decline in value of water facility** on page 105 and **Grapevines and horticultural plants** on page 104 for more information.

To calculate the deduction for the decline in value of most depreciating assets, use worksheet 1 and worksheet 2 in the *Guide to depreciating assets 2009*.

Deduction for environmental protection expenses

The partnership or trust can deduct expenditure to the extent that it is incurred for the sole or dominant purpose of carrying on environmental protection activities (EPA). EPA are activities undertaken to prevent, fight or remedy pollution or to treat, clean up, remove or store waste from the partnership's or trust's earning activity. The earning activity is one the partnership or trust carried on, carries on or proposes to carry on for the purpose of:

- producing assessable income (other than a net capital gain)
- exploration or prospecting
- mining site rehabilitation.

The partnership or trust may also claim a deduction for cleaning up a site on which a predecessor carried on substantially the same business activity.

The deduction is not available for:

- EPA bonds and security deposits
- expenditure for acquiring land
- expenditure for constructing or altering buildings, structures or structural improvements
- expenditure to the extent that the partnership or trust can deduct an amount for it under another provision.

Expenditure which forms part of the cost of a depreciating asset is not expenditure on EPA.

You can write off expenditure incurred on or after 19 August 1992 on certain earthworks constructed as a result of carrying out EPA at the rate of 2.5% per annum under the provisions for capital works expenditure.

You cannot claim a deduction for expenditure on an environmental assessment of a project of the partnership or the trust as expenditure on EPA. If it is capital expenditure directly connected with a project, it could be a project amount for which a deduction would be available over the project life – see **Deduction for project pool** on the next page.

If the deduction arises from a non-arm's length transaction and the expenditure is more than the market value of what it was for, the amount of the expenditure is instead taken to be that market value.

Include any recoupment of the expenditure as assessable income at **G** or **H Other business income** item 5, or as an income add back at **Reconciliation items, A Income reconciliation adjustments** item 5.

Include the deduction for environmental protection expenses at **Expenses, N All other expenses** item 5, or as an expense subtraction at **Reconciliation items, B Expense reconciliation adjustments** item 5. Also show the amount of the deduction at **V Deduction for environmental protection expenses** item 56.

Deduction for project pool

You can allocate certain capital expenditure incurred after 30 June 2001 directly connected with a project that is carried on, or proposed to be carried on, for a taxable purpose to a project pool and write it off over the project life.

A project is carried on if it involves a continuity of activity and active participation. Merely holding a passive investment such as a rental property would not be regarded as carrying on a project.

The capital expenditure, known as a project amount, must be expenditure incurred:

- to create or upgrade community infrastructure for a community associated with the project – this expenditure must be paid, not just incurred, to be a project amount
- for site preparation for depreciating assets (other than in draining swamp or low-lying land or in clearing land for horticultural plants including grapevines)
- for feasibility studies for the project
- for environmental assessments for the project
- to obtain information associated with the project
- in seeking to obtain a right to intellectual property
- for ornamental trees or shrubs.

Project amounts also include mining capital expenditure and transport capital expenditure.

The expenditure must not otherwise be deductible or form part of the cost of a depreciating asset.

If the expenditure incurred arises from a non-arm's length dealing and is more than the market value of what it was for, the amount of the expenditure is taken to be that market value.

The deduction for project amounts allocated to a project pool commences when the project starts to operate.

If your project pool contains only project amounts incurred on or after 10 May 2006 and the project starts to operate on or after that date, your deduction is calculated as follows:

$$\frac{\text{pool value} \times 200\%}{\text{DV project pool life}}$$

Certain projects may be taken to have started to operate before 10 May 2006 – for example, if a project is abandoned and then restarted on or after 10 May 2006 just so deductions can be calculated using the above formula.

For other project pools, the deduction is calculated using the following formula:

$$\frac{\text{pool value} \times 150\%}{\text{DV project pool life}}$$

The **DV project pool life** is the project life or, if that life has been recalculated, the most recently recalculated project life. Determine the project life by estimating how long (in years and fractions of years) it will be from when the project starts to operate until it stops operating. Generally, a project starts to operate when the activities that will produce assessable income start. The project life is estimated from the perspective of the partnership or trust but the event used to determine when the project will stop operating must be something outside its control.

The **pool value** for an income year is broadly the sum of the project amounts allocated to the pool up to the end of that year less the sum of the deductions claimed for the project pool in previous years or that could have been claimed had the project operated wholly for a taxable purpose.

The pool value can be subject to adjustments.

If there is an entitlement to a GST input tax credit for expenditure allocated to a project pool, reduce the pool value by the amount of the credit. You will also need to adjust the pool value for certain increasing or decreasing adjustments for expenditure allocated to a project pool.

The pool value can also be subject to adjustment under the forex provisions. A relevant foreign exchange (forex) gain or loss may arise if, during an income year beginning on or after 1 July 2003, the partnership or trust ceased to have an obligation to pay foreign currency where the obligation was incurred as a project amount allocated to a project pool. If the amount was incurred after 30 June 2003 (or earlier, if so elected) and became due for payment within 12 months after it was incurred, then the pool value for the income year in which the amount was incurred is increased by any forex loss and decreased by any forex gain. If the forex gain exceeds the pool value, reduce the pool value to zero and the excess gain is assessable. This is known as 'the 12 month rule'. In limited circumstances a partnership or trust may elect out of the 12 month rule. For more information, see *Forex: election out of the 12 month rule* on our website. If it has been elected that the 12 month rule should not apply, any forex gain will be assessable and any forex realisation loss will be deductible in accordance with the forex measures. For more information about the forex measures, see page 8 or visit our website and search for 'forex'.

The deduction for project amounts allocated to a project pool cannot be more than the amount of the pool value for that income year.

There is no need to apportion the deductions if the project starts to operate during the income year for project amounts incurred during the year. However, the deduction is reduced for the extent to which the project is operated for other than a taxable purpose during the income year.

If the project is abandoned, sold or otherwise disposed of, you can claim a deduction for the sum of the closing pool value of the prior income year (if any) plus any project amounts allocated to the pool during the income year, after allowing for any necessary pool value adjustments. A project is abandoned if it stops operating and will not operate again.

Any amount received for the abandonment, sale or other disposal of a project is assessable income.

If an amount of capital expenditure allocated to a project pool is recouped or if a capital amount is derived in relation to a project amount or something on which a project amount was expended, include the amount in assessable income.

If any receipt arises from a non-arm's length dealing and the amount is less than the market value of what it was for, the amount received is taken to be that market value.

Include any deduction for a project pool as an expense subtraction at **Reconciliation items, B Expense reconciliation adjustments** item 5. You must also show the deduction at item **49 Deduction for project pool**.

The partnership or trust must add back any capital expenditure allocated to the pool that has been included as an expense at item 5. Show the amount as an expense add back at **Reconciliation items, B Expense reconciliation adjustments** item 5.

Include assessable income at **G** or **H Other business income** item 5 or as an income add back at **Reconciliation items, A Income reconciliation adjustments** item 5.

Electricity connections and telephone lines

P Expenditure on electricity connections and telephone lines incurred in partnership is allocated to each partner and the relevant deduction is available to them. It is not available in calculating the net income or loss of a partnership.

The partnership must add back any such capital expenditure included as an expense at item 5. Show the amount as an expense add back at **Reconciliation items, B Expense reconciliation adjustments** item 5.

T A trust can claim a deduction over 10 years for capital expenditure incurred in connecting:

- mains electricity to land on which a business is carried on or in upgrading an existing connection to that land
- a telephone line to land being used to carry on a primary production business.

Show the deduction as an expense subtraction at **Reconciliation items, B Expense reconciliation adjustments** item 5.

The trust must add back any capital expenditure on electricity connections and phone lines included as an expense at item 5. Show the amount as an expense add back at **B Expense reconciliation adjustments** item 5.

Any recoupment of the expenditure is included as assessable income at **G** or **H Other business income** item 5, or as an income add back at **Reconciliation items, A Income reconciliation adjustments** item 5.

Grapevines and horticultural plants

P Expenditure on establishing grapevines and horticultural plants incurred by a partnership is allocated to each partner and the relevant deduction is available to them. It is not available in calculating the net income or loss of a partnership.

The partnership must add back any such capital expenditure included as an expense at item 5. The amount should be shown as an expense add back at **Reconciliation items, B Expense reconciliation adjustments** item 5.

T Any grapevines planted and used in a primary production business prior to 1 October 2004 are deductible using an annual rate of 25%.

For grapevines planted on or after 1 October 2004:

- Deductions for the decline in value of a grapevine can only be claimed from the income year in which the grapevine's first commercial season starts, not when it is first used in a primary production business.
- The decline in value of a grapevine will not be worked out at an annual rate of 25% but will be based on the effective life of the grapevine.

The Commissioner has determined effective lives for grapevines as follows:

TABLE 6.1

Horticultural plants	Effective life (years)
Grapevines, dried grapes	15
Grapevines, table grapes	15
Grapevines, wine grapes	20

The income tax law provides an annual write-off rate for a horticultural plant with an effective life of 13 to fewer than 30 years of 13%.

Alternatively a taxpayer can estimate their own effective life for grapevines.

The deduction for the decline in value of grapevines and horticultural plants is part of the deduction for decline in value of depreciating assets which is included either at **Expenses, K Depreciation expenses** item 5 if the trust is using the small business entity depreciation rules, or as an expense subtraction at **Reconciliation items, B Expense reconciliation adjustments** item 5.

If the trust has included any expenditure on establishing grapevines or horticultural plants as an expense at item 5, include that amount as an expense add back at **B Expense reconciliation adjustments** item 5.

Hire purchase agreements

Hire purchase and instalment sale agreements of goods are treated as a sale of the property by the financier (or hire purchase company) to the hirer (or instalment purchaser).

The sale is treated as being financed by a loan from the financier to the hirer at a sale price of either their agreed cost or the arm's length value of the property. The periodic hire purchase (or instalment) payments are treated as payments of principal and interest under the notional loan. The hirer can claim a deduction for the interest component, subject to any reduction required under the thin capitalisation rules.

In relation to the notional sale, the hirer of a depreciating asset may be entitled to claim a deduction for the decline in value. The cost of the asset for this purpose is taken to be the agreed cost or value, or the arm's length value if the dealing is not at arm's length. For assets subject to the small business entity depreciation rules, see page 36. For assets not subject to the small business entity depreciation rules, see **Deduction for decline in value of depreciating assets** on page 101.

If the partnership or trust has included any hire purchase charges for the goods at item 5, include the amount at **Reconciliation items, B Expense reconciliation adjustments** item 5 as an expense add back. Include the deduction for the interest component of the hire purchase payments as an expense subtraction at **B**.

Landcare operations and decline in value of water facility

P Landcare operation expenditure and expenditure for water facilities incurred in partnership is allocated to each partner and the relevant deduction is available to the partner. It is not available in calculating the net income or loss of a partnership.

The partnership must add back any such capital expenditure included as an expense at item 5. Show the amount as an expense add back at **Reconciliation items, B Expense reconciliation adjustments** item 5.

T A trust can claim deductions for landcare operation expenditure and expenditure for water facilities, see pages 106–7.

Include the deduction for landcare operations either at **Expenses, N All other expenses** item 5 or as an expense subtraction at **Reconciliation items, B Expense reconciliation adjustments** item 5.

The deduction for decline in value of a water facility is part of the trust's deduction for decline in value of depreciating assets which is included either at **Expenses, K Depreciation expenses** item 5 for small business entities using the simplified depreciation rules, or as an expense subtraction at **Reconciliation items, B Expense reconciliation adjustments** item 5.

Also show the amount of deductions for landcare operations and the decline in value of a water facility at item 55 **Landcare operations and deduction for decline in value of water facility**.

If any capital expenditure on water facilities is included as an expense at item 5, you will need to include that amount as an expense add back at **Reconciliation items, B Expense reconciliation adjustments** item 5.

Include any recoupment of expenditure on landcare operations or water facilities as assessable income at **G** or **H Other business income** item 5, or as an income add back at **Reconciliation items, A Income reconciliation adjustments** item 5.

Landcare operations

Landcare operations cover what were previously known as land degradation measures. The trust can claim a deduction in the year it incurs capital expenditure on a landcare operation for land in Australia.

Unless the trust is a rural land irrigation water provider, the deduction is available to the extent the trust uses the land for either:

- a primary production business
- in the case of rural land, a business for the purpose of producing assessable income from the use of that land – except a business of mining or quarrying.

The trust may claim the deduction even if it is only a lessee of the land.

The deduction for landcare operations has been extended to rural land irrigation water providers for certain expenditure they incur on or after 1 July 2004. A rural land irrigation water provider is an entity whose business is primarily and principally supplying water to entities for use in primary production businesses on land in Australia or businesses (except mining or quarrying businesses) using rural land in Australia. The supply of water by using a motor vehicle is excluded.

If the trust is a rural land irrigation water provider, it can claim a deduction for capital expenditure on a landcare operation for:

- land in Australia that other entities use at the time for carrying on primary production businesses
- rural land in Australia that other entities use at the time for carrying on businesses for a taxable purpose from the use of that land (except a business of mining or quarrying), being entities supplied with water by the trust.

A rural land irrigation water provider's deduction is reduced by a reasonable amount to reflect an entity's use of the land for other than a taxable purpose after the water provider incurred the expenditure.

A landcare operation is one of the following:

- erecting fences to separate different land classes in accordance with an approved land management plan
- erecting fences primarily and principally to keep out animals from areas affected by land degradation to prevent or limit further damage and assist in reclaiming the areas
- constructing a levee or similar improvement
- constructing drainage works – other than the draining of swamps or low-lying land – primarily and principally to control salinity or assist in drainage control
- an operation primarily and principally for eradicating or exterminating animal pests from the land
- an operation primarily and principally for eradicating, exterminating or destroying plant growth detrimental to the land

- an operation primarily and principally for preventing or combating land degradation other than by the use of fences
- an extension, alteration or addition to any of the assets described in the first four dot points or an extension of an operation described in the fifth to seventh dot points.

The meaning of landcare operation has been extended to apply to expenditure incurred on or after 1 July 2004 on:

- a repair of a capital nature to an asset which is deductible under a landcare operation
- constructing a structural improvement that is reasonably incidental to levees or drainage works deductible under a landcare operation
- a repair of a capital nature, or an alteration, addition or extension to a structural improvement that is reasonably incidental to levees (or similar improvements) or drainage works deductible under a landcare operation.

An example of a structural improvement that may be reasonably incidental to drainage works is a fence constructed to prevent livestock entering a drain that was constructed to control salinity.

The trust cannot claim a deduction if the capital expenditure is on plant unless it is on certain fences, dams or other structural improvements.

If a levee is constructed primarily and principally for water conservation, it would be a water facility and no deduction would be allowable under these rules. Its decline in value would need to be worked out under the rules for water facilities – see **Water facilities** below.

Water facilities

The trust can claim a deduction for the decline in value of a water facility. A water facility is plant or a structural improvement, or an alteration, addition or extension to plant or a structural improvement, that is primarily or principally for the purpose of conserving or conveying water. Examples of water facilities are dams, tanks, tank stands, bores, wells, irrigation channels, pipes, pumps, water towers and windmills. The meaning of water facility has been extended to include certain other expenditure incurred on or after 1 July 2004:

- a repair of a capital nature to plant or a structural improvement that is primarily or principally for the purpose of conserving or conveying water – for example, if the trust purchases a pump that needs substantial work done to it before it can be used in the business, the cost of repairing the pump may be treated as a water facility
- a structural improvement, or an alteration, addition, extension, to a structural improvement, that is reasonably incidental to conserving or conveying water
- a repair of a capital nature to a structural improvement that is reasonably incidental to conserving or conveying water.

Examples of structural improvements that are reasonably incidental to conserving or conveying water include a bridge over an irrigation channel, a culvert (a length of pipe or multiple pipes that are laid under a road to allow the flow of water in a channel to pass under the road), or a fence preventing livestock from entering an irrigation channel.

A deduction for the decline in value of a water facility can be claimed in equal instalments over three years.

Unless the trust is an irrigation water provider, the expenditure must be incurred primarily and principally for conserving or conveying water for use in a primary production business the trust conducts on land in Australia. The trust may claim the deduction even if it is merely a lessee of the land.

The deduction is reduced where the facility is not wholly used for either:

- carrying on a primary production business on land in Australia
- a taxable purpose – for example, producing assessable income.

The deduction for water facilities has been extended to irrigation water providers for expenditure incurred on or after 1 July 2004. An irrigation water provider is an entity whose business is primarily and principally the supply of water to entities for use in primary production businesses on land in Australia. The supply of water by using a motor vehicle is excluded.

If the trust is an irrigation water provider, it must incur the expenditure primarily and principally for the purpose of conserving or conveying water for use in primary production businesses conducted by other entities on land in Australia – being entities supplied with water by the trust. The deduction is reduced if the facility is not used wholly for a taxable purpose.

Limited recourse debt

Under Division 243 of the ITAA 1997, the limited recourse debt rules, you must include excessive deductions for capital allowances as assessable income if expenditure on property has been financed or refinanced wholly or partly by limited recourse debt. This will occur if:

- the limited recourse debt is terminated after 27 February 1998 but has not been paid in full by the debtor, and
- because the debt has not been paid in full, the capital allowance deductions allowed for the expenditure exceed the deductions that would be allowable if the unpaid amount of the debt was not counted as capital expenditure of the debtor. Special rules apply in working out whether the debt has been fully paid.

Limited recourse debt is a debt where the rights of the creditor against the debtor in the event of default in payment of the debt or of interest are limited wholly or predominantly to the property that has been financed by the debt, or is security for the debt, or rights in relation

to such property. A debt is also a limited recourse debt if, notwithstanding that there may be no specific conditions to that effect, it is reasonable to conclude that the creditor's rights against the debtor are capable of being limited in that way. Limited recourse debt includes a notional loan under a hire purchase or instalment sale agreement of goods to which Division 240 of the ITAA 1997 applies (see section 243-20 of the ITAA 1997). The rules in section 243-75 apply where Divisions 243 and 245 (commercial debt forgiveness – see **appendix 4**) of the ITAA 1997 both apply to the same debt.

Loss on the sale of a depreciating asset

Any such loss included in the accounts will differ from the balancing adjustment amount taken into account for taxation purposes.

If the accounts show a loss on the sale of a depreciating asset under **Expenses, N All other expenses item 5**, show that amount as an expense add back at **Reconciliation items, B Expense reconciliation adjustments item 5**. Also see **Balancing adjustment amounts** on page 101.

Low-value pools

If the partnership or trust has allocated depreciating assets used for different income-producing purposes to its low-value pool – for example, some assets that are used for producing rental income and others that are used in carrying on a business – show the low-value pool deduction at item **18 Other deductions**. However, if all the depreciating assets in the low-value pool are used for the same income-producing purpose, show the deduction for decline in value of the assets in the pool as follows:

- depreciating assets used in carrying on a business: show the deduction as an expense subtraction at **Reconciliation items, B Expense reconciliation adjustments item 5**
- depreciating assets used to produce rental income: show the deduction at **H Other rental deductions item 9**
- depreciating assets used to produce Australian investment income: show the deduction at item **16 Deductions relating to Australian investment income**.

To calculate the deduction for decline in value of depreciating assets in a low-value pool, use **worksheet 2** in the *Guide to depreciating assets 2009*.

Luxury car leases

Luxury car leasing arrangements (other than genuine short-term hire arrangements) are treated as a notional sale and loan transaction.

A leased car, either new or second hand, is a luxury car if its cost exceeds the car limit that applies for the income year in which the lease commences. The car limit for 2008–09 is \$57,180.

The cost or value of the car specified in the lease (or the market value if the parties were not dealing at arm's length

in connection with the lease) is taken to be the cost of the car for the lessee and the amount loaned by the lessor to the lessee to buy the car.

For the notional loan, divide the actual lease payments into notional principal and finance charge components. The lessee can claim a deduction for that part of the finance charge component for the notional loan applicable for the particular period (the accrual amount), subject to any reduction required under the thin capitalisation rules.

For the notional sale, the lessee is treated as the holder of the luxury car and may be entitled to claim a deduction for the decline in value of the car.

For the purpose of calculating the deduction, the cost of the car is limited to the car limit for the income year in which the lease is granted. For information about where to show the deduction for decline in value, see **Deduction for decline in value of depreciating assets** on page 101.

Alternatively, if the lessee is using the small business entity depreciation rules for the income year in which the lease is entered into, the lessee allocates the car to its general small business pool. For the purpose of calculating the deduction under the small business entity depreciation rules, the cost of the car is limited to the car limit for the income year in which the lease is granted.

In summary, the lessee is entitled to deductions equal to the:

- accrual amount, and
- decline in value of the luxury car, based on the applicable car limit, unless the car is allocated to the general small business pool.

Both deductions are reduced to reflect any use of the car for other than a taxable purpose.

If the car is allocated to the general small business pool with the cost based on the applicable car limit, see page 34 to calculate the deduction under the small business entity depreciation rules.

If the lease terminates or is not extended or renewed and the lessee does not actually acquire the car from the lessor, the lessee is treated under the rules as disposing of the car by way of sale to the lessor. This constitutes a balancing adjustment event. If the car is not subject to the small business entity depreciation rules, you must determine any assessable or deductible balancing adjustment amount for the lessee. If the car has been allocated to the lessee's general small business pool, see **Step 5 Disposal of depreciating assets** on page 38.

If you included luxury car lease payments at **Expenses, G Lease expenses** item 5, also include the amount at **Reconciliation items, B Expense reconciliation adjustments** item 5 as an expense add back. Include the deduction for the accrual amount as an expense subtraction at **Reconciliation items, B Expense reconciliation adjustments** item 5.

Profit on the sale of a depreciating asset

Any such profit included in the accounts will differ from the balancing adjustment amount taken into account for taxation purposes.

If the accounts show a profit on the sale of a depreciating asset under **G** or **H Other business income** item 5, include that amount as an income subtraction at **Reconciliation items, A Income reconciliation adjustments** item 5. Also see **Balancing adjustment amounts** on page 101.

Section 40-880 deduction

This section provides a five-year write-off for certain business related capital expenditure incurred by the partnership or trust in relation to a past, present or proposed business.

As part of the tax treatment for blackhole expenditure, rules apply to business-related capital expenditure incurred after 30 June 2005. Section 40-880 deductions are no longer limited to seven specific types of business-related capital expenditure. The partnership or trust may now be able to claim a deduction for capital expenditure it incurs after 30 June 2005:

- in relation to its business
- in relation to a business that it used to carry on – such as capital expenses incurred in order to cease the business
- in relation to a business it proposes to carry on – such as the costs of feasibility studies, market research or setting up the business entity
- as a shareholder, beneficiary or partner to liquidate or deregister a company or to wind up a trust or partnership, provided that the company, trust or partnership carried on a business.

If the partnership or trust incurs the relevant capital expenditure in relation to its existing business, a former business or a proposed business, the expenditure is only deductible to the extent the business is, was or is proposed to be carried on for a taxable purpose.

The partnership or trust cannot deduct expenditure in relation to an existing business that is carried on by another entity, or a proposed business unless it is proposed to commence within a reasonable time. However, it can deduct expenditure it incurs in relation to a business that used to, or is proposed to be, carried on by another entity. Such expenditure is only deductible to the extent that the:

- business was, or is proposed to be, carried on for a taxable purpose, and
- expenditure is in connection with the
 - business that was or is proposed to be carried on, and
 - derivation of assessable income from that business by the partnership or trust.

A section 40-880 deduction cannot be claimed for capital expenditure to the extent that it:

- can be deducted under another provision of the income tax laws
- forms part of the cost of a depreciating asset the partnership or trust holds, used to hold or will hold
- forms part of the cost of land
- relates to a lease or other legal or equitable right
- would be taken into account in working out an assessable profit or deductible loss

- could be taken into account in working out a capital gain or a capital loss from a CGT event
- would be specifically not deductible under the income tax laws if the expenditure was not capital expenditure
- is specifically not deductible under the income tax laws for a reason other than that the expenditure is capital expenditure
- is of a private or domestic nature
- is incurred in relation to gaining or producing exempt income or non-assessable non-exempt income
- is excluded from the cost or cost base of an asset because, under special rules in the UCA or capital gains tax regimes respectively, the cost or cost base of the asset was taken to be the market value
- is a return of or on capital (for example, distributions by trustees) or a return of a non-assessable amount (for example, repayments of loan principal).

The partnership or trust deducts 20% of the qualifying capital expenditure in the year it is incurred and in each of the following four years.

If a partner in a partnership is an individual, the non-commercial loss rules may defer the partner's deductions for their share of a loss from a business activity of the partnership – refer to the electronic fact sheet *Non-commercial losses: partnerships*, available on our website, for more information.

Show the section 40-880 deduction as an expense subtraction at **Reconciliation items, B Expense reconciliation adjustments** item 5. Also show the amount at item **50 Section 40-880 deduction**.

If you have included any of the expenditure incurred for the income year as an expense at item 5, show this amount as an expense add back at **Reconciliation items, B Expense reconciliation adjustments** item 5.

Deduction for the small business and general business tax break

The small business and general business tax break in the form of an investment allowance is now available for expenditure on eligible new tangible depreciating assets. The tax break provides the following deductions for:

- **small business entities** (turnover of less than \$2 million a year)
 - an additional tax deduction of 50% of the cost of eligible new tangible depreciating assets is available where the business
 - commits to investing in the asset between 13 December 2008 and 31 December 2009 inclusive, and
 - first uses the asset, or installs it ready for use, or (in the case of new investment in an existing asset) brings the asset to its modified or improved state, on or before 31 December 2010
- **other business entities** (turnover of \$2 million or more a year)
 - an additional tax deduction of 30% of the cost of eligible new tangible depreciating assets is available where the business

- commits to investing in the asset between 13 December 2008 and 30 June 2009 inclusive, and
- first uses the asset, or installs it ready for use, or (in the case of new investment in an existing asset) brings the asset to its modified or improved state, on or before 30 June 2010
- an additional tax deduction of 10% of the cost of eligible new tangible depreciating assets is available where the business
 - commits to investing in the asset between 13 December 2008 and 30 June 2009 inclusive, and
 - first uses the asset, or installs it ready for use, or (in the case of new investment in an existing asset) brings the asset to its modified or improved state, between 1 July 2010 and 31 December 2010
- an additional tax deduction of 10% of the cost of eligible new tangible depreciating assets is available where the business
 - commits to investing in the asset between 1 July 2009 and 31 December 2009 inclusive, and
 - first uses the asset, or installs it ready for use, or (in the case of new investment in an existing asset) brings the asset to its modified or improved state, on or before 31 December 2010.

Generally, a business 'commits' to investing when:

- it enters into a contract under which the asset is held
- it starts to construct the asset, or
- it starts to hold the asset in some other way.

The tax break applies to new tangible depreciating assets for which a deduction is available under Subdivision 40-B of the ITAA 1997 and certain new investments in existing assets.

Cars will not be disqualified from the tax break merely because you use the 12% method.

Land and trading stock are excluded from the definition of depreciating assets, and will not qualify for the deduction.

The cost of an eligible new tangible asset includes amounts included in the first element of cost (worked out under Subdivision 40-C of the ITAA 1997), and amounts included in the second element of cost under paragraph 40-190(2)(a) of the ITAA 1997. New expenditure on existing assets may also qualify.

It must be reasonable to conclude that the assets will be used principally in Australia for the principal purpose of carrying on a business.

Small businesses will be able to claim the deduction for eligible assets costing \$1,000 or more. Small businesses must have a turnover of less than \$2 million a year to qualify. For other businesses, a minimum expenditure threshold of \$10,000 applies.

In order to meet the relevant threshold, a taxpayer can aggregate their investment in a set of assets, or in a group of assets where the assets in the group are identical or substantially identical.

Where assets are held jointly, a taxpayer can take into account the other business interests in the asset when determining whether the investment threshold test is satisfied. However, the taxpayer will only be able to claim the tax break on their interest in the asset.

Where a taxpayer has met the investment threshold for an asset, they can claim the additional investment in the assets as part of the tax break.

The tax break is on top of the usual capital allowance deduction you are able to claim for the asset.

Provided all of the eligibility criteria are satisfied, the deduction is claimable in the income year in which the asset is first used, or installed ready for use.

For further information, go to our website at www.ato.gov.au and enter 'Investment allowance: small business and general business tax break' in the 'Search for' box at the top of the page.

Include the deduction for the small business and general business tax break related to a primary production business as an expense subtraction in the primary production column at **Reconciliation items, Expense reconciliation adjustments** item 5. Include the deduction for the small business and general business tax break related to a non-primary production business as an expense subtraction in the non-primary production column at **Reconciliation items, Expense reconciliation adjustments** item 5. Do not include any amount that relates to depreciating assets used to derive interest or dividends from carrying on a business (see below for further instructions). Add up your primary production and non-primary production deductions for the small business and general business tax break and write the total at **Reconciliation items, B Expense reconciliation adjustments** item 5. Also show the total amount of the deduction at **F Small business and general business tax break** item 51.

Where the claim for the small business and general business tax break relates to depreciating assets used to derive income from carrying on a business of renting properties, the amount should be included as an expense subtraction in the non-primary production column at **Reconciliation items, Expense reconciliation adjustments** item 5 and in the total at **Reconciliation items, B Expense reconciliation adjustments** item 5. Also include this amount in the total amount of the deduction at **F Small business and general business tax break** item 51.

Where the claim for the small business and general business tax break relates to depreciating assets used to derive interest or dividends from carrying on a business, include the amount at item **16 Deductions relating to Australian investment income**. Also include this amount in the total amount of the deduction at **F Small business and general business tax break** item 51.

APPENDIX 7 DEDUCTIONS APPLICABLE TO PARTNERS

P

Capital allowances for primary producers and some landholders

A partnership cannot claim a deduction under Subdivisions 40-F and 40-G of the ITAA 1997 for:

- electricity connections and telephone lines
- grapevines and horticultural plants
- landcare operations and the decline in value of a water facility.

Each partner can claim a deduction in accordance with any agreement on how the expenditure is to be borne or, if there is no agreement, according to each partner's interest in the partnership income or loss.

For more information, see the *Guide to depreciating assets 2009*.

Film industry incentives

The conditions under which concessions are available if a partnership invests in or contributes money to the production of a qualifying Australian film are explained in *Australian film industry incentives 2009*.

The concession does not apply in the calculation of the partnership net income or loss but is available instead on the partner's own tax return. Capital expenditure is treated as having been expended by the partners according to any agreements on how the expenditure is to be borne or, if there is no agreement, according to each partner's interest in the partnership income. Similarly, film income is apportioned to each partner.

Farm management deposits scheme

The farm management deposits (FMD) scheme reduces fluctuations in a primary producer's income.

A partnership cannot have an FMD or claim a deduction for a deposit to an FMD.

A partner in a partnership that carries on a primary production business in Australia may be able to claim a deduction in the income year in which they deposit an amount into an FMD. The deposit must be made by or on behalf of only one person. Any withdrawals of that deposit are assessable income to the extent they have been previously claimed as a deduction.

For information about further requirements for the FMD deduction, see question **17 Net farm management deposits or withdrawals** in *TaxPack 2009 supplement and Information for primary producers 2009* (NAT 1712).

Partnership losses

If a partnership loss is incurred by a partnership in an income year, individual partners can claim a deduction for their share of the partnership loss. A partnership loss is incurred if the allowable deductions – other than deductions allowable for personal superannuation contributions or tax losses of earlier income years under the ITAA 1997 – exceed the assessable income of the partnership. The partnership loss is the amount of that excess.

An exception to this is foreign source losses, which are carried forward within the partnership. For more information, see Taxation Determination TD 92/113.

Rules on deferring non-commercial business losses may apply to a partner, who is an individual, to defer the deduction for their share of a loss from a business activity of the partnership. An individual may be covered by an exception, or the business activity may satisfy one of four tests, or the Commissioner may exercise his discretion. For more information on these rules, see question 16

Deferred non-commercial business losses in *TaxPack 2009 supplement* and the electronic fact sheet *Non-commercial losses: partnerships*, available on our website.

Research and development expenditure

Companies incorporated in Australia may be entitled to tax concessions in relation to eligible expenditure incurred on qualifying research and development (R&D) activities carried out in Australia. A partner in a partnership of otherwise eligible companies may also be entitled to the R&D concession in relation to eligible expenditure on qualifying activities. For information on how a company may claim the R&D tax concession, see the *Research and development tax concession schedule instructions 2009* (NAT 6709), available on our website at www.ato.gov.au/randd

Superannuation

For information on claiming a deduction for personal superannuation contributions, see *TaxPack 2009 supplement*.

APPENDIX 8 TRUST LOSS AND BAD DEBT LEGISLATION – SCHEDULE 2F TO THE *INCOME TAX ASSESSMENT ACT 1936*

T

Legislation contained in Schedule 2F to the ITAA 1936 affects the deductibility by trusts of prior year losses, debt deductions – bad debts and debt and equity swap amounts – and other current year amounts. For more information on the trust loss provisions, family trust elections or interposed entity elections, phone the Business Infoline.

Types of trust for the purposes of the legislation

The legislation applies to two broad categories of trusts, referred to in the measures as:

- fixed trusts, where persons have fixed entitlements to all of the income and capital of the trust – see section 272-65 of Schedule 2F to the ITAA 1936, and
- non-fixed trusts (including discretionary trusts) – defined in section 272-70 of Schedule 2F to the ITAA 1936.

Excepted trusts – defined in section 272-100 of Schedule 2F to the ITAA 1936 – include family trusts (as defined in Subdivision 272-D of Schedule 2F to the ITAA 1936, see **Family trust/interposed entity election status** on page 23), complying superannuation funds, complying approved deposit funds, pooled superannuation trusts, deceased estates administered within five years, and fixed unit trusts that are directly or indirectly wholly owned by tax exempt bodies.

Ownership and control tests

If a trust fails a test relating to ownership or control that applies to it under the legislation, the trust may:

- be prevented from deducting its tax losses of earlier income years
- have to work out its net income and tax loss in a special way
- be prevented from deducting certain amounts in respect of debts – that is, debt deductions – incurred in the income year or earlier income years.

Fixed trusts that are not excepted trusts are subject to the 50% stake test, which tests for continuity of majority underlying beneficial ownership of the trust during the relevant periods – see section 269-55 of Schedule 2F to the ITAA 1936. Fixed trusts that are listed widely held trusts – as defined in section 272-115 of Schedule 2F to the ITAA 1936 – that fail the 50% stake test but pass the same business test – see section 269-100 of Schedule 2F to the ITAA 1936 – may avoid the above consequences. See Division 266 of Schedule 2F to the ITAA 1936 for the ownership tests that apply to fixed trusts.

Non-fixed trusts that are not excepted trusts are subject to:

- the 50% stake test – if applicable
- the control test – see section 269-95 of Schedule 2F to the ITAA 1936
- the pattern of distributions test – see section 269-60 of Schedule 2F to the ITAA 1936 – if applicable.

See Division 267 of Schedule 2F to the ITAA 1936 for the ownership and control tests that apply to non-fixed trusts.

These ownership and control tests do not apply to excepted trusts, including family trusts – as defined.

Tracing concessions where fixed entitlements are held by certain kinds of companies, funds or trusts

For the purpose of applying the 50% stake test or the pattern of distribution test to a trust under the legislation, there are concessional tracing rules for fixed entitlements that are held directly or indirectly by:

- a government body
- a special company – as defined
- certain kinds of funds
- a family trust – as defined
- a listed public company
- a widely held unit trust.

See sections 272-25 and 272-30 of Schedule 2F to the ITAA 1936.

Income injection test

Under the legislation, a trust – including a family trust – involved in a scheme to take advantage of deductions to the trust may be prevented from making full use of the deductions under the income injection test contained in Division 270 of Schedule 2F to the ITAA 1936.

In general terms, the income injection test applies if under a scheme an ‘outsider’ to the trust – see section 270-25 of Schedule 2F to the ITAA 1936 – provides a benefit to the trust, a benefit is provided to the outsider by the trust, and either of those benefits was provided, or assessable income was derived by the trust, wholly or partly (but not merely incidentally) because a deduction was allowable to the trust.

For the definition of a ‘benefit’, see section 270-20 of Schedule 2F to the ITAA 1936.

APPENDIX 9 INSTRUCTIONS TO TRUSTEES OF DECEASED ESTATES

These instructions will help you complete the trust tax return for a deceased estate, if you are:

- the legal personal representative
- a trustee or executor
- an administrator of a deceased estate
- collecting information on behalf of an administrator.

Deceased estates

A ‘deceased estate’ is a trust. Unlike a natural person or a company, a trust is not a legal entity in its own right, but a relationship between a trustee and beneficiaries. The trustee administers the trust property in the best interests of the beneficiaries.

A trust is made up of the:

- assets of a deceased person – the trust property
- beneficiaries – who, in a typical deceased estate, are those normally named in the will of a deceased person, although in some circumstances the courts may vary the terms of a will. Beneficiaries may include the surviving partner, children and grandchildren, and charitable or scientific institutions and religious bodies
- trustee – who is usually appointed by the deceased person’s will. For income tax purposes, the legal personal representative of a deceased estate is the trustee of the deceased estate.

NOTE:

- Any tax liabilities of the deceased person are paid out of the deceased estate.
- If the administration of the estate takes some time, assets may earn income, and the estate may incur expenses. A tax return for the trust, as well as an individual return from the beginning of the income year to the date of death, may be required.
- The legal personal representative of the estate is responsible for the payment of any tax payable by the trust.

What you need to do as a legal personal representative

- Notify the Tax Office of the death, so that we can stop the issue of any notices that may cause distress to partners or other relatives. If you know the TFN for the deceased person, quote this in any phone calls or letters to us.
- Lodge a ‘date of death’ return.

Date of death returns may not need to be lodged for people who obviously have no taxation liability and may not have lodged tax returns for many years – such as taxpayers who were receiving:

- the age pension
- the disability support pension, or
- a Department of Veterans' Affairs (DVA) pension.

In these cases the legal personal representative of the deceased person simply needs to write and tell us the facts.

A date of death return covers the period from the beginning of the income year to the date of the taxpayer's death. Show the name of the taxpayer as **THE LEGAL REPRESENTATIVE OF JOHN CITIZEN DECEASED**, or similar. The return must include:

- all assessable income and deductible losses or outgoings of the deceased person up to the date of death
- a full and true statement of the assets and liabilities of the deceased person at the date of death – for salary and wage earners this is only necessary if the Tax Office asks for it.

The return may also include:

- tax agent's fees and similar expenses incurred by the taxpayer's legal personal representative. These are deductible expenses
- medical expenses incurred by the deceased taxpayer and paid by the legal personal representative. A medical expenses tax offset may be allowable for this expenditure.

The legal personal representative can sign the return.

The period from the date of death to the end of the income year is covered by the first return of the deceased estate. Trustees of a deceased estate must use the *Trust tax return 2009*. The trustee needs to apply for a trust TFN by completing an *ABN registration for companies, partnerships, trust and other organisations* (NAT 2939) if an ABN is required or a *Tax file number application or enquiry for a deceased estate* (NAT 3236) if an ABN is not required. Show the name of the trust as **THE ESTATE OF JOHN CITIZEN DECEASED** or similar.

Amounts of assessable income received after death

If assessable income, including interest, rent, and business or employment income, is received after a taxpayer's death, it is part of the deceased estate. The trustee is then liable for paying any tax due on those amounts.

Recreation leave and long service leave

Amounts of recreation leave and long service leave, ordinarily assessable under sections 83-10 and 83-80 of the ITAA 1997, are exempt from tax when paid directly to the trustee of a deceased estate.

Dividends

Dividends are usually assessable when they are credited to a taxpayer.

Payments from friendly society funeral policies

A funeral policy is a type of life insurance policy issued by a friendly society for the sole purpose of providing benefits to pay for the funeral of an insured person. In some instances the policy holder pays a funeral director upfront for a set funeral service and this payment is managed by a friendly society in a funeral policy.

Benefits received by the deceased estate under a friendly society funeral policy that was taken out before 1 January 2003 are exempt from tax.

If the deceased person was insured under a friendly society funeral policy taken out after 31 December 2002, the investment income from the funeral policy is included in the assessable income of the estate, if the estate's trustee:

- instructs the friendly society to pay a funeral director or other party for the insured person's funeral expenses, or
- is reimbursed for the funeral expenses.

In these circumstances the distribution statement issued by the friendly society will advise the amount of income to be included on the trust tax return.

If the policy proceeds are paid to a funeral director, either under a policy assignment or as the nominated beneficiary, they are included in the funeral director's assessable income and no amount needs to be included in the estate's assessable income.

Employment termination payments

An ETP paid to a trustee is taxed in the hands of the trustee in the same way that it would be taxed if paid directly to a beneficiary. That is, the portions of the payment are subject to tax to the extent the beneficiary is a dependant (see **Definition of terms**, page 53) or a non-dependant of the deceased.

Superannuation lump sums

A superannuation death benefit paid to a trustee is taxed in the hands of the trustee in the same way that it would be taxed if paid directly to a beneficiary. That is, the portions of the payment are subject to tax to the extent the beneficiary is a dependant or a non-dependant of the deceased. There is no tax payable to the extent that the payment is made to dependants or eligible non-dependants of the deceased.

Eligible non-dependants of Australian Defence Force and Australian police force (including Australian Protective Services) members who have died in the line of duty are treated as dependants for tax purposes.

Capital gains tax

From the 2006 income year, a trustee of a testamentary trust can choose to be assessed on some part or all of an amount of a net capital gain that is included in the net income of a trust.

For more information on deceased estates and CGT, see the *Guide to capital gains tax 2009*.

Paying tax on the income of deceased estates

A trustee cannot distribute the income or assets of a deceased estate until the debts of the deceased person, including any outstanding tax liabilities, are determined. For taxation purposes, this requires a notice of assessment. Once a notice of assessment is issued, the trustee can deal with the assets of the deceased person in accordance with the will.

A trustee can distribute some of the income or assets to beneficiaries if the trustee is certain that the remainder of the estate is sufficient to cover any outstanding liabilities. Beneficiaries who receive payments of income are considered to be presently entitled to them and they declare them and pay tax on those amounts in their own tax returns.

Any undistributed trust income, or income accumulated in the deceased estate and not paid to or applied to the credit of beneficiaries, is treated as income to which 'no beneficiary is presently entitled' – for example, where the administration of an estate is not finalised.

For more information on the term 'presently entitled' and the taxation of trusts, see page 78.

NOTE

Tax rates applicable to a resident individual – that is, normal tax rates – are applied to the net income to which no beneficiary is presently entitled if the person died less than three years before the end of the income year.

Example 9.1 Completing a simple deceased estate return

Page 1

Complete all appropriate items.

If the activities of the executor, in realising the deceased estate, amount to carrying on an enterprise and an ABN is required, complete an *ABN registration companies, partnerships, trusts and other organisations* (NAT 2939) to obtain an ABN. For more information on carrying on an enterprise, see *Miscellaneous Taxation Ruling MT 2006/1 – The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number ('ABN')*.

If an ABN is not required and an ABN registration is not lodged, before completing the trust tax return apply for a trust TFN by completing a *Tax file number application or enquiry for a deceased estate* (NAT 3236).

Executors of deceased estates can also apply online for a TFN by completing the relevant parts of the *Tax file number application for companies and other organisations* (NAT 3799), available at www.abr.gov.au and through the ELS.

Show the name of the trust as **THE ESTATE OF JOHN CITIZEN DECEASED** or similar. Print code **D** in the CODE box at **Type of trust** and complete the date of death box.

Pages 3 to 5

Complete the appropriate items listed below.

Income

8 Partnerships and trusts

Show at **A** or **B** **Distributions from partnerships** any amount of primary production or non-primary production partnership income.

Show at **Z** or **R** **Distribution from trusts** any amount of primary production or non-primary production trust income received after the date of death.

Show at **S** **Deductions relating to distributions in labels A and Z**, any deductions for the deceased estate's own expenses in relation to distributions of primary production income.

Show at **T** **Deductions relating to distributions in labels B and R** any deductions for the deceased estate's own expenses in relation to distributions of non-primary production income.

Show at **C** **Share of credit for tax withheld where ABN not quoted** any share of credit for tax withheld where an ABN was not quoted.

Show at **D** **Share of franking credit from franked dividends** any share of franking credit from franked dividends.

Show at **E** **Share of credit for TFN amounts withheld from interest, dividends and unit trust distributions** any share of credit for TFN amounts withheld from interest, dividends and unit trust distributions.

Show at **V** **Share of credits for tax withheld from managed investment trust fund payments** any share of credits for tax withheld from managed investment trust fund payments.

9 Rent

Show at **F Gross rent** the gross amount of rent including any booking or letting fees.

Show at **G Interest deductions** the total interest expenses incurred in earning rental income.

Show at **X Capital works deductions** the total capital works deduction for rental buildings.

Show at **H Other rental deductions** the expenses that relate to this rental income.

Show at **Net rent** the net amount of any rent.

11 Gross interest

Show at **J** the interest from banks and credit unions, building societies, debentures, notes and deposits, discounted or deferred interest securities, government securities, Australian Government loans issued before 1 November 1968, and interest paid by the Tax Office.

The total – that is, the gross amount of interest received or credited – must be included in assessable income.

Copy details from all statements to **worksheet 3** on page 89. Keep the worksheet with the trust's tax records.

Discounted, deferred interest or capital-indexed securities

Show at **J** the appropriate amount of discount, interest or other gain which accrued this income year on a discounted, deferred interest or capital-indexed security:

- that was issued after 16 December 1984
- that had a maturity date of over 12 months from the issue date, and
- where the sum of all payments under the security (except periodic interest – for example, a coupon rate) exceeds its issue price by greater than 1.5%.

TFN amounts withheld from gross interest

Show at **I TFN amounts withheld from gross interest** the TFN amounts withheld from gross interest.

NOTE

We may check the amount shown at item **11** with our own records to determine accuracy. See **Information matching** on page 9.

12 Dividends

Show at **K Unfranked amount** the total amount of unfranked dividends, and the unfranked amount of partially franked dividends, received.

Show at **L Franked amount** the franked amount of franked dividends received.

Show at **M Franked credit** the amount of franking credits received directly from a paying company.

Show at **N TFN amounts withheld from dividends** the total of TFN amounts withheld from dividends received.

NOTE

We may check the amount shown at item **12** with our own records to determine accuracy. See **Information matching** on page 9.

13 Superannuation lump sums and employment termination payments

Show at **V taxed element** the taxed element of the death benefit superannuation lump sum where the beneficiary is a non-dependant.

Show at **W untaxed element** the untaxed element of the death benefit superannuation lump sum where the beneficiary is a non-dependant.

Show at **X taxable component** the taxable component of the death benefit employment termination payment where the beneficiary is a dependant.

Show at **Y taxable component** the taxable component of the death benefit employment termination payment where the beneficiary is a non-dependant.

14 Other Australian income

Show at **O** any other income received by the estate after the date of death. Include at **O** salary and wages received after the date of death and the assessable amount of benefits under friendly society funeral policies taken out after 31 December 2002.

15 Total of items 5 to 14

Show the total income amounts.

Deductions

16 Deductions relating to Australian investment income

Show at **P** the expenses incurred in earning interest and dividends.

18 Other deductions

Show at **Q** any other tax-related expenses. Do not include capital expenses incurred in administering the estate.

19 Total of items 16 to 18

Show the total deduction amounts.

20 Net Australian income or loss

Show at **S** the total amount shown at item **15 Total of items 5 to 14** less the total amount shown at item **19 Total of items 16 to 18**.

21 Capital gains

Show at **A** the net capital gain made by the trustee of the estate. The trustee may need to complete a CGT schedule if the trust has:

- a CGT event occurring in relation to an FMIS interest that is held other than as an initial participant
- total current year capital gains for the income year greater than \$10,000
- total current year capital losses for the income year greater than \$10,000.

For more information, see the Guide to capital gains tax 2009.

NOTE

Capital losses incurred by the deceased before their death cannot be carried forward to their estate.

24 Total of items 20 to 23

Show the total amount of net income or loss plus any net capital gain amount.

26 Total net income or loss

The amount at item **26** equals the amount at item **24** if no amount is disclosed under **Tax losses deducted** at item **25**.

Page 5

Complete **Key financial information** items **31** to **35**.

Page 7

Complete the appropriate items listed below.

63 Statement of distribution

If the deceased estate has distributed amounts to trustee beneficiaries, the trustee will need to consider whether they are required to lodge a TB statement. See **appendix 12** for more information on these reporting requirements.

If there has been no distribution of income from the deceased estate, the net income amount shown at item **26 Total net income or loss** is shown at **Share of income**, separated into primary production income and non-primary production income. Print the total at **A** and **B** under **Income to which no beneficiary is presently entitled**.

Print an assessment calculation code at **V Assessment calculation code**. For a list of trust assessment calculation codes, see **appendix 13**.

For lodgment addresses, see page 131.

For payment options, see pages 131–2.

APPENDIX 10 INSTRUCTIONS TO TRUSTEES WHERE A BENEFICIARY IS UNDER 18 YEARS OF AGE – OTHER THAN TRUSTEES OF DECEASED ESTATES

T

This appendix outlines the application of the special taxation provisions relating to trust income to which beneficiaries under 18 years of age are, or are deemed to be, presently entitled. It will help you complete **O** item **14** and **Excepted net income** at item **14**.

The basis of the system

Special taxation provisions apply to certain trust income, including capital gains, derived during the income year to which specified beneficiaries under 18 years of age at the end of the income year – that is, minors – are presently entitled.

This includes income to which a beneficiary is deemed to be presently entitled.

Beneficiaries under 18 years of age are referred to as minor beneficiaries or minors. Unless the minor beneficiary is an excepted person or the distribution is excepted income, trust income to which a minor is presently entitled generally is taxed at the highest marginal tax rate plus the Medicare levy. The tax rates that apply are in **appendix 11**.

In some cases it is unreasonable for the full amount of the additional tax under the system to be payable on income – for example, in cases of serious hardship. For more information on details of special measures under which release from the obligation to pay some or all of the additional tax may be granted, see **appendix 11**.

If the trustee considers that the system and the consequential higher tax rates are not applicable for any reason to the whole or part of the trust income to which any minor beneficiary is presently entitled, keep the information set out in the questions on page 120 with the trust's tax records. Some circumstances in which a trustee can ignore these details are set out in **Completing the questions** on page 118. If the trustee fails to consider and keep the information in the questions, where this is necessary, together with any additional information, the income to the trustee could be assessed at the highest marginal tax rate provided under the system.

The effect of the system on trust income

The system has no effect on ascertaining the trust net income.

The system can affect an assessment issued to the trustee where a minor beneficiary is presently entitled, but only if the minor is a 'prescribed person' and to the extent that income of the trust to which that beneficiary is presently entitled is eligible income.

Persons to whom the system applies

Prescribed person

The system applies to a prescribed person, who is a beneficiary under 18 years of age at the end of the income year and is not an excepted person.

Excepted person

A person is an 'excepted person' if, on the last day of the income year, any of the following circumstances applied to them:

- They were engaged in a full-time occupation (see below).
- They were entitled to a disability support pension or rehabilitation allowance, or someone was entitled to a carer allowance to care for them.
- They had a medical certificate (or a previous medical certificate for a disability they had that existed on the last day of the income year) that certified that they
 - were disabled and were likely to suffer from that disability permanently or for an extended period
 - had a physical or mental disability that prevents them from working in the next two years and either the disability prevents them from undertaking educational, vocational or on-the-job training in the next two years or they are able to undertake educational, vocational or on-the-job training, but it is unlikely the training will enable them to work within the next two years, or
 - were permanently blind.
- They were a person who received little or no financial support from relatives and were
 - entitled to a double orphan's pension, or
 - unable to engage in a full-time occupation because of a permanent mental or physical disability.

A person is regarded as dependent for support on a relative if they live with the relative, unless it can be established that they were not dependent on that relative for financial support.

The meaning of full-time occupation

Occupation includes an office, employment, trade, business, profession, vocation or calling but does not include a course of education at a school, college, university or similar institution. A beneficiary is accepted as being engaged in a full-time occupation on the last day of the income year if they were engaged in full-time employment or business:

- on the last day of the income year, or
- for three months or more during the income year (ignoring any period of full-time employment or business that was followed by full-time study) and on the last day of the income year they had
 - the intention of continuing in that, or engaging in another, full-time occupation during the whole or most of the following income year, and
 - no intention of returning to full-time education at any time during the following income year.

A period during which a person receives youth allowance does not constitute a period of engagement in full-time occupation.

Income to which the system applies

If the minor beneficiary is a prescribed person, part of the trust income might be:

- subject to the system – this is referred to as 'eligible income'
- excluded – this part is referred to as 'excepted income'.

Eligible income

Trust income to which a minor beneficiary, who is a prescribed person, is presently entitled, is eligible income except to the extent that the income can be classified as excepted income for the beneficiary. Eligible income is subject to higher tax rates plus the Medicare levy in the hands of both the trustee and the beneficiary. The beneficiary will receive a credit for the tax paid by the trustee.

Excepted income

An amount included in the assessable income of a trust is excepted income only to the extent that the assessable trust income would, if derived by the minor beneficiary, be excepted income.

The amount of excepted income is based on the facts of each individual case.

Income derived by the trust is excepted income to the extent that it is:

- employment income
- income from the estate of a deceased person, either as a result of a will or an intestacy, or a court order modifying a will or the distribution of an intestate estate
- income derived from the investment of any property transferred to the trustee for the benefit of the beneficiary
 - to satisfy a claim for damages to the beneficiary for loss of parental support, for personal injury, for disease or for impairment of physical or mental condition, or as a settlement made otherwise than by a court order, to the extent that the income is considered to be at a fair and reasonable level
 - as workers compensation or compensation for criminal injury
 - directly as a result of another person's death and being, under the terms of a life assurance policy, out of a superannuation, provident, benefit or retirement fund, or from an employer of the deceased person
 - out of a public fund established and maintained exclusively for the relief of persons in necessitous circumstances
 - under a decree or order of dissolution or annulment of marriage having effect in Australia by the *Family Law Act 1975*, or recognised as valid in Australia, or an order as the result of a family breakdown – as defined in section 102AGA of the ITAA 1936

- as a verifiable prize beneficially owned by the minor in a legally authorised and conducted lottery
- as an entitlement from a deceased estate
- by transfer from another person, out of property that devolved upon that other person from a deceased estate, and that person transferred it to the trustee within three years of the date of death of the deceased, subject to limitations based on what would have passed to the beneficiary under laws of intestacy
- income derived from the investment of any property representing accumulations of income not subject to the system, being from sources indicated above (including where those accumulations were made from income of a prior year) or being savings from exempt income which, if it had not been exempt, would similarly have been excepted income.

Income from an investment made from sources as described above is excepted income and is taxed at normal individual rates. If such an investment is sold or otherwise realised, and the proceeds invested in a different form that represents that earlier property, income from the new investment keeps the character of excepted income.

Exceptions are not available if an arrangement is entered into so that the income is not subject to the system.

In addition, if an arrangement is entered into between persons who are not dealing with each other at arm's length and this results in an amount of excepted income greater than the amount which would have resulted had the parties been dealing at arm's length, only an amount equal to that arm's length amount is excepted from the higher rates of tax.

Business income derived by a trust cannot be excepted income as such, but it may constitute excepted income on some other basis – for example, business income of a deceased estate.

If any part of the trust income is considered to be excepted income, read **Completing the questions** in the next column and consider **part B** of the questions on page 120. Irrespective of these questions you must include the income on the trust tax return so that the tax return discloses the total trust income from all sources in the normal way.

Each beneficiary's excepted income component must bear the same proportion to the total trust income as that beneficiary's share of net income bears to the total trust net income. If the trustee considers, for any reason, that there are circumstances that warrant a different determination, attach a statement to the trust tax return setting out the facts and the reasons why. Print **YES** in the **Have you attached any 'other attachments'?** box at the top of page 1 of the tax return.

Employment income

Normally, employment income is derived directly by a minor and thus is excepted income. Occasionally, however, superannuation pensions and similar payments, which are employment income, are paid to a trustee on behalf of a minor. Payments of this kind are excepted income in the hands of the trustee.

Allocation of deductions between eligible and excepted income

In determining the trust income on which a minor has to pay tax, deductions are applied against eligible assessable income of the trust as follows:

- any deductions that relate exclusively to that eligible assessable income. These are indicated on the trust tax return
- so much of any other deductions – other than apportionable deductions – as may appropriately be related to that eligible assessable income
- a proportionate share of any apportionable deductions, most commonly gifts. The formula for calculating this amount is:

$$\frac{E \times A}{N}$$

where:

E net eligible income – before apportionable deductions

A apportionable deductions

N net income – before apportionable deductions.

Completing the questions on page 120

Read all of **appendix 10** to find out whether you need to answer the questions on page 120. Do not include the questions with the trust tax return – keep them with the trust's tax records.

The questions are divided into:

- **part A** – relating to the eligibility of the minor beneficiary to be treated as an excepted person, and
- **part B** – relating to the nature of the trust income.

Some of the questions need to be answered if the trustee claims that all or any part of the share of the trust income to which a beneficiary is presently entitled is excepted income – that is, income not subject to tax at the higher rate applicable to a minor.

The questions need **not** be answered by a trustee if:

- no beneficiary is under 18 years of age on the last day of the income year
- the trust is the estate of a deceased person, or
- all of the following apply
 - the share of trust income to which each resident beneficiary under 18 years of age is presently entitled does not exceed \$416 – the low income tax offset of \$1,200 effectively increases the threshold to \$2,666.

- there is no non-resident beneficiary under 18 years of age on the last day of the income year
- no beneficiary is also a beneficiary in another estate that derives income
- the trustee is able to certify for each beneficiary that the beneficiary does not need to furnish an individual tax return, or if the beneficiary is required to furnish an individual tax return, the only income on that tax return, other than the share of trust income, is from salary, wages or payment for services rendered.

If the trust does not fall within the exceptions listed above:

- read and answer **part A** for
 - any resident beneficiary who is an excepted person unless the trust income to which the beneficiary is presently entitled is less than \$416 – the low income tax offset of \$1,200 effectively increases the threshold to \$2,666 – and that beneficiary derives no income from another trust
 - any non-resident beneficiary who is an excepted person.
- do not answer **part B** if all the beneficiaries of the trust are excepted persons and **part A** has been answered. **Part B** is answered where
 - any resident minor beneficiary – being a prescribed person – is presently entitled to trust income in excess of \$416
 - the share of net trust income of any resident minor beneficiary, being a prescribed person, is \$416 or less – the low income tax offset of \$1,200 effectively increases the threshold to \$2,666 – and the beneficiary is also the beneficiary in another trust, or
 - any non-resident minor beneficiary, being a prescribed person, is presently entitled to \$1 or more of trust income.

The minor beneficiary may be entitled to a release from some or all of the tax charged at the higher rate if they face serious hardship. For more information, see **appendix 11**.

If one or more minor beneficiaries of the trust are excepted persons or a distribution includes excepted income, attach a statement to the tax return with the information requested on page 55. Show the amount of excepted income at both **Q** item **14** and **Excepted net income** item **14**.

TABLE 10.1

Part A Read and answer these questions if it is claimed that the beneficiary was an excepted person on the last day of the income year (30 June). If the answer to any question in part A is yes, there is no need to answer any more questions in part A or part B .	Yes or no
Is it claimed that the beneficiary was an excepted person on any of the following grounds?	
<ul style="list-style-type: none"> ■ The beneficiary was in a full-time job on 30 June (or had been in a full-time occupation for at least three months in the period leading up to 30 June). 	
<p>Note: If the beneficiary goes back to full-time studies before 1 July 2009, it cannot be claimed that the beneficiary is an excepted person by being in a full-time job.</p>	
<ul style="list-style-type: none"> ■ The beneficiary was entitled to a disability support pension or rehabilitation allowance, or someone for the beneficiary was entitled to a carer allowance on 30 June. 	
<ul style="list-style-type: none"> ■ The beneficiary was disabled and was likely to suffer from that disability permanently or for an extended period, or permanently blind. A medical certificate will be needed for the beneficiary to qualify as an excepted person on this basis, but do not attach it to the trust tax return. 	
<ul style="list-style-type: none"> ■ The beneficiary, or someone for the beneficiary, was entitled to a double orphan's pension on or for a period of time that included 30 June and the beneficiary did not rely on support from a relative in that time. 	
<ul style="list-style-type: none"> ■ The beneficiary was unlikely to have a full-time job owing to a permanent mental or physical disability and the beneficiary did not rely on support from a relative in that time. 	

Part B Read these questions if it is claimed that all or part of the trust income during the income year was excepted unless all beneficiaries are excepted persons.	Yes or no	Amount of income
Is it claimed that any part of the trust income is excepted income because it is:		
<ul style="list-style-type: none"> ■ in the nature of employment income (not including employment income paid to beneficiaries for services rendered)? 		
<ul style="list-style-type: none"> ■ income derived from any property transferred to the trustee for the benefit of the beneficiary in any of the special circumstances in Excepted income on page 117? 		
<ul style="list-style-type: none"> ■ income derived from the investment of property representing accumulations of income not subject to the system? For more information, see Excepted income on page 117. 		
Total net excepted income		\$
If any excepted income includes a capital gain subject to CGT, show the amount of the capital gain here.		\$

NOTE

Net excepted income here means the sum of the gross amounts of excepted income of all prescribed beneficiaries less deductions applicable to those amounts.

Unless adjustments are made, the assessable eligible income of the prescribed beneficiaries is the difference between the total net excepted income of the trust, as calculated above, and the amount of the net income of the trust, as shown at item **26 total net income or loss** on the trust tax return, less any share of the income in respect of which non-prescribed person beneficiaries are presently entitled and any income to which no beneficiary is presently entitled.

APPENDIX 11 RATES OF TAX PAYABLE BY TRUSTEES ON BEHALF OF BENEFICIARIES UNDER 18 YEARS OF AGE T

If a beneficiary is presently entitled to a share of the trust income and is under 18 years of age, the trustee is assessed and is liable to pay tax on that income as if it were the income of an individual. A beneficiary deriving income from other sources in addition to the trust income is assessed on the total income in their personal income tax return. A credit is allowed in the individual's return for the amount of tax paid or payable by the trustee on the trust income.

If a beneficiary is under 18 years of age at 30 June in the income year (a minor beneficiary), special taxation provisions apply to their income (eligible income) unless the beneficiary is an excepted person or the income is excepted income.

To work out whether a minor beneficiary is an excepted person or whether their trust income is excepted income or eligible income, see **appendix 10**.

If a minor beneficiary is an excepted person, the trustee pays tax on the beneficiary's share of net trust income at the normal individual rates, if the beneficiary is a resident, or at non-resident rates if they are a non-resident.

If a minor beneficiary is a prescribed person, the trustee pays tax on the beneficiary's trust income as follows:

- resident beneficiary – pays tax on the excepted trust income at the normal individual rates and pays tax on the beneficiary's eligible trust income at higher rates applicable to a resident
- non-resident beneficiary – pays tax on the excepted trust income at the non-resident rates and pays tax on the beneficiary's eligible trust income at higher rates applicable to a non-resident.

The following notes assume that a trustee is entitled, on behalf of a resident beneficiary, to the full tax-free threshold of \$6,000. Where a beneficiary becomes or ceases to be an Australian resident, a reduced tax-free threshold may apply.

Rates for excepted income

If a minor resident beneficiary's share of the trust net income consists wholly of excepted income, or includes an amount of eligible income not exceeding \$416 and the beneficiary is not entitled to a share of the net income of any other trust, the trustee pays tax at normal individual rates. If a non-resident minor beneficiary's share of the trust net income consists wholly of excepted income, the trustee pays tax at the rates normally applying to non-residents.

Rates for eligible taxable income

Table 11.1 sets out the higher tax rates that apply to the eligible taxable income of a minor who was a resident for the full income year.

TABLE 11.1

Eligible taxable income	Tax rate if beneficiary is a resident
\$0–\$416	Nil*
\$417–\$1,307	Nil + 66 cents for every dollar over \$416
\$1,308 and above	45 cents in the dollar of the entire amount
* The first \$416 of eligible taxable income is taxed at the normal individual rates. If the beneficiary has no other income, no tax is payable on the first \$416. The tax-free amount is effectively increased to \$2,666 due to the low-income tax offset of \$1,200.	

Table 11.2 sets out the higher tax rates that apply to the eligible income of a minor who was a **non-resident** for the full income year.

TABLE 11.2

Eligible taxable income	Tax rate if beneficiary is a non-resident
\$0–\$416	29 cents in each dollar up to \$416
\$417–\$732	\$120.64 + 66 cents for every dollar over \$416
\$733 and above	45 cents in the dollar of the entire amount

If a beneficiary receives distributions of eligible income from more than one trust, the sum of the eligible income from those distributions is taken into account in working out the tax rate to apply.

If a minor beneficiary's share of trust income includes eligible taxable income subject to higher tax rates as well as excepted income, the tax on the excepted income (and up to \$416 of the eligible income if the beneficiary is a resident) is first calculated at normal individual rates as if that income were the taxable income. In this way beneficiaries who are resident for the full income year apply the zero rate of tax on the first \$6,000 and the 15% rate from \$6,001 to \$34,000 on the taxable income which is excepted income.

Eligible taxable income is then taxed at the higher rates set out in the relevant table above.

The trustee pays tax in respect of the beneficiary on excepted income at normal individual rates, plus the tax on the eligible income at the higher rate, less allowable tax offsets and other credits.

In a limited number of cases, where eligible taxable income of a resident is within a range with a tax rate less than 45 cents in the dollar as set out in **tables 11.1** and **11.2**, tax calculated on the beneficiary's share of net trust income at normal individual rates would exceed the tax calculated separately on the excepted income and eligible income components. In such cases, the trustee pays tax on the beneficiary's net trust income at normal individual rates. If the beneficiary is a non-resident, similar calculations are made using the rates that normally apply to non-residents.

Relieving provisions

Under Part 4-50 of Schedule 1 to the TAA 1953, release from an individual's obligation to pay certain tax liabilities may be granted where the Commissioner is satisfied that payment of those liabilities would cause serious hardship. The release provisions also pertain to the minor beneficiary's obligation to pay additional tax pursuant to these provisions.

Beneficiaries who are owners of farm management deposits (FMDs)

If a beneficiary is under a legal disability and is the owner of an FMD made during the year of income, the trustee is not taxed on the share of net income to which the beneficiary is presently entitled. The beneficiary is treated as if no legal disability exists and will be assessed on their individual return, in respect of their share of net income of the trust estate and their claim for the FMD deduction.

APPENDIX 12 TRUSTEE BENEFICIARY REPORTING

T

Changes have been made to the reporting obligations for trustees of closely held trusts from the first income year starting on or after 24 September 2007. For most trustees the income year commencing on 1 July 2008 will be the first year to complete a TB statement under these rules.

If you are the trustee of a closely held trust with trustee beneficiaries presently entitled to a share of income or tax-preferred amount (amounts not included in the trust's assessable income in working out the net income and capital of the trust) you must provide the Commissioner with a correct TB statement for each trustee beneficiary. These changes replace the former ultimate beneficiary reporting requirements.

Closely held trust

A **closely held trust** is:

- a trust where 20 or fewer individuals have between them, directly or indirectly, fixed entitlements to 75% or more of the income or capital of the trust, or
 - a discretionary trust
- except where the trust is an excluded trust.

See section 102UC(1) of the ITAA 1936.

A **discretionary trust** is a trust that is not a fixed trust within the meaning of section 272-65 of Schedule 2F to the ITAA 1936. See section 102UC(4) of the ITAA 1936 and section 272-65 of Schedule 2F to the ITAA 1936.

An **excluded trust** is a:

- complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust
- deceased estate, up to the end of the income year in which the fifth anniversary of the death occurs
- fixed trust that is a unit trust, and exempt entities (entities whose ordinary and statutory income are exempt from tax) have fixed entitlements, directly or indirectly, and for their own benefit, to all of the income and capital of the trust
- unit trust whose units are listed on the ASX Limited
- family trust, or
- trust that has made an interposed entity election under section 272-85 of Schedule 2F to the ITAA 1936 or is wholly owned by the family (see section 272-90(5) of Schedule 2F to the ITAA 1936).

See section 102UC(4) and section 272-100 of Schedule 2F to the ITAA 1936.

Trustee beneficiary

A **trustee beneficiary** is a beneficiary of the trust in the capacity of trustee of another trust. See section 102UD of the ITAA 1936.

Instructions for completing the TB statement:

To make a correct TB statement you must complete the following for each trustee beneficiary:

1 Beneficiary details:

For resident beneficiaries show the name of the trustee beneficiary and their TFN.

For non-resident beneficiaries show the name of the trustee beneficiary and their address.

2 TB statement Information

- a) Print **Y** to indicate you are making a TB statement for this trustee beneficiary.
- b) At **P** show any tax-preferred amounts to which the trustee beneficiary is presently entitled. If there are no tax-preferred amounts, show **zero** at **P**.
- c) At **Q** show any untaxed part of a share of net income to be included in the assessable income of the trustee beneficiary. If there is no untaxed part of a share of net income, show **zero** at **Q**.

A **tax-preferred amount** is income of the trust that is not included in its assessable income in working out its net income or capital of the trust.

EXAMPLE

Trust X is a closely held trust and has made a family trust election. Trust X makes a distribution of \$1,000 net income to the trustee of Trust Y, who is outside the 'family group'. As Trust Y is outside the family group, FTDT is paid by the trustee of Trust X on that distribution.

Income on which FTDT has been paid is non-assessable, non exempt income and is not included in the assessable income of Trust Y.

Trustee of Trust Y distributes that amount (\$1,000) to the trustee of Trust Z (resident trustee beneficiary). This amount is a tax-preferred amount as it is not included in the assessable income of Trust Y.

To make a correct TB statement for the trustee beneficiary the trustee of Trust Y would report:

- the name and TFN of the Trustee of Trust Z, '1000' at **P** and '0' at **Q**.

An **untaxed part of a share of net income** is the share of the net income of a closely held trust less any part that has been taxed under:

- subsection 98(4) of the ITAA 1936
- Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953*
- Division 6D (trustee beneficiary non-disclosure tax) in respect of which the trustee of another trust estate is liable to pay the no-disclosure tax.

An untaxed part of a share of net income includes interest, dividends or royalties that have been subjected to a withholding tax if these amounts are included in the assessable income of a non resident trustee beneficiary.

EXAMPLE

The trustee of Trust A (a closely held trust) has three trustee beneficiaries:

- trustee of Trust B is a resident and their share of Trust A's net income is \$5,000
- trustee of Trust C is a resident and presently entitled to a tax-preferred amount of \$2,000
- trustee of Trust D is a non-resident and their share of trust A's net income is \$4,000 (all attributable to Australian sources).

To make correct TB statements for the trustee beneficiaries, the trustee of Trust A would report:

- name and TFN of the trustee of Trust B, '0' at **P** and '5000' at **Q**
- name and TFN of the trustee of Trust C, '2000' at **P** and '0' at **Q**
- no TB statement is required for Trust D. The trustee of Trust A is liable to pay tax on Trust D's share of the net income under subsection 98(4) of the ITAA 1936. That amount does not then form part of the untaxed part of a share of net income and does not need to be reported.

Note: The reporting obligations under Division 6D apply to both Australian and foreign source income however Australian source income which is taxed under section 98(4) of the ITAA 1936 is not included as an untaxed part of a share of net income. If the share of the net income which is included in the assessable income of a non resident trustee beneficiary includes income from a foreign source, then that foreign source income is an untaxed part of a share of net income and must be reported in a TB statement.

For further details of what amounts comprise an untaxed part of a share of net income or a tax-preferred amount, refer to the fact sheet *Trustee beneficiary rules* available from www.ato.gov.au

Amendments to TB statements

TB statements can only be amended in certain circumstances.

Trustees can lodge an amended TB statement where they have given a TB statement that they believe on reasonable grounds to be correct; and:

- they could not reasonably have foreseen the event that caused the statement to be incorrect
- the statement is not correct because of an inadvertent error.

For further information on amendments to TB statements, refer to the fact sheet *Trustee beneficiary non-disclosure tax* available from www.ato.gov.au

Trustee beneficiary non-disclosure tax

TBNT is payable where:

- the trustee of a closely held trust fails to lodge a correct TB statement within the specified period in respect of each trustee beneficiary's share of net income
- a share of the net income of a closely held trust is included in the assessable income of a trustee beneficiary under section 97 of the ITAA 36 and the trustee of the closely held trust becomes presently entitled to an amount that is reasonably attributable to the whole or a part of the untaxed part of the share (referred to as a 'round robin' or 'circular distribution').

The specified period for lodgment of the TB statement is the period between the end of the relevant year of income and the due date of the trust's tax return, or such further period allowed by the Commissioner. Completion of the TB statement in the distribution statement in the trust's tax return will satisfy the lodgment requirement.

TBNT is imposed on the untaxed part of a share of the net income of the trustee beneficiary at the rate of 46.5%.

TBNT is due and payable 21 days after the TB statement is due, or a later date allowed by the Commissioner.

You can obtain a TBNT payment advice (NAT 72967) from **www.ato.gov.au**

If the trustee fails to make a correct TB statement within the specified period in respect of a trustee beneficiary's share of tax-preferred amounts, the trustee may be guilty of an offence under the TAA 1953.

For further information on the TB reporting rules, refer to the fact sheet *Trustee beneficiary rules* available from **www.ato.gov.au**

TABLE 13.1

INTER VIVOS TRUSTS – including discretionary trusts	Assessment codes	
	Resident beneficiary	Non-resident beneficiary
The beneficiary is presently entitled to a share of the income of the trust and is:		
over 18 years of age, under a legal disability or an excepted person	25*	125*
a prescribed person receiving excepted income only	26*	126*
a prescribed person receiving eligible income only	27*	127*
a prescribed person receiving excepted and eligible income only	28*	128*
a prescribed person receiving eligible income from more than one trust	29*	129*
not under any legal disability	30	138*
a company	34	139*
a trustee	35	140**
No beneficiary is presently entitled to a share of the income of the trust and is:		
a resident or non-resident trust where no beneficiary is presently entitled to income	36*	
a bankrupt estate	37*	
a resident or non-resident trust where no beneficiary is presently entitled to income and to which subsection 99A(2) of the ITAA 1936 is to be applied	37*	

DECEASED ESTATE	Assessment codes	
	Resident beneficiary	Non-resident beneficiary
The beneficiary is presently entitled to a share of the income of the trust and is:		
under a legal disability	11*	111*
not under a legal disability	12	118*
a company	13	119*
a trustee	14	120**
No beneficiary is presently entitled to a share of the income of the trust and:		
the deceased person died less than three years before the end of the income year	15*	
the deceased person died more than three years before the end of the income year	16*	
it is a non-resident trust	17*	

* Tax assessable to the trustee

** Codes 120 and 140 apply if the beneficiary of the trust is a non-resident trustee. See pages 82-4 for more information.

If you have used codes 35 or 140 (inter vivos trusts) or 14 or 120 (deceased estates) you may be required to complete a TB statement. See **appendix 12** for more information.

APPENDIX 14 SMALL BUSINESS ENTITIES

Small businesses with an aggregated turnover of less than \$2 million are called small business entities and may qualify for a range of tax concessions.

Eligible businesses can choose to use the concessions that best suit their needs. It is not necessary to elect to be a small business entity each year to access the concessions. Nonetheless, eligibility must be reviewed each year.

A small business entity may be eligible for the following concessions:

- CGT 15-year asset exemption
- CGT 50% active asset reduction
- CGT retirement exemption
- CGT rollover provisions
- simplified depreciation rules (see page 36)
- immediate deduction for certain prepaid business expenses (see page 42)
- simplified trading stock rules (see page 68)
- choice to account for GST on a cash basis
- annual apportionment of GST input tax credits in certain circumstances
- paying GST by instalments
- FBT car parking exemption
- PAYG instalments based on GDP-adjusted notional tax.

Many of these concessions have additional eligibility conditions that must also be satisfied.

Certain small business entities may also be eligible to claim the 25% entrepreneurs' tax offset (see page 72).

➤ For more information about small business entity concessions, see *Concessions for small business entities – guide for small business operators* (NAT 71874), visit our website at www.ato.gov.au/SBconcessions or phone the Business Infoline.

Eligibility

The partnership or trust will be a small business entity if it is carrying on a business and has an aggregated turnover of less than \$2 million. This is known as the small business entity test.

'Business' is defined broadly to include 'any profession, trade, employment, vocation or calling, but does not include occupation as an employee'. 'Carrying on a business' is not defined in the tax law and therefore takes its ordinary meaning. An entity is also taken to be carrying on a business for the purposes of the small business entity test in an income year if:

- the entity is winding up a business it formerly carried on, and
- it was a small business entity in the income year that it stopped carrying on the business.

Aggregated turnover is the annual turnover of the partnership or trust plus the annual turnovers of any entities that are *connected with* it or that are its *affiliate*.

➤ For more information on calculating aggregated turnover including the meaning of 'connected with' or 'affiliated with' the partnership or trust, see *Concessions for small business entities – guide for small business operators* (NAT 71874).

Eligibility must be reviewed each year.

Calculating turnover

Turnover includes all ordinary income the partnership or trust earned in the ordinary course of business for the income year. The following are some examples of amounts included and not included in ordinary income.

TABLE 3: Ordinary income

Include these amounts	Do not include these amounts
<ul style="list-style-type: none">■ sales of trading stock■ fees for services provided■ interest from business bank accounts■ amounts received to replace something that would have had the character of business income, for example, a payment for loss of earnings	<ul style="list-style-type: none">■ GST the partnership or trust has charged on a transaction■ amounts borrowed for the business■ proceeds from the sale of business capital assets■ insurance proceeds for the loss or destruction of a business asset■ amounts received from repayments of farm management deposits

There are special rules for calculating the annual turnover if the partnership or trust has retail fuel sales or business dealings with associates that are not at market value.

➤ For more information about calculating turnover, visit our website or phone the Business Infoline.

Aggregation rules

Special rules called the aggregation rules will determine who the partnership or trust is connected or affiliated with.

These rules prevent larger businesses from structuring or restructuring their affairs to take advantage of the small business entity concessions.

An entity that is connected with the partnership or trust, or that is its affiliate is referred to as a *relevant entity*.

When calculating the aggregated turnover of the partnership or trust, do **not** include income from:

- dealings between the partnership or trust and a relevant entity
- dealings between any relevant entities of the partnership or trust
- a relevant entity when it was not a relevant entity of the partnership or trust.

➤ For more information on the aggregation rules, including the meaning of 'connected with' or 'affiliated with' the partnership or trust, see *Concessions for small business entities – guide for small business operators* (NAT 71874).

❗ If the partnership or trust carries on a business during the current income year and has an aggregated business turnover of less than \$2 million under the aggregation rules discussed above, then the partnership or trust is a small business entity.

Business operated for only part of the year

If the partnership or trust, or a relevant entity, carries on a business for only part of the income year, annual turnover must be worked out using a reasonable estimate of what the turnover would have been if the partnership or trust, or a relevant entity, had carried on a business for the whole of the income year.

Satisfying the aggregated turnover threshold

There are three ways to satisfy the \$2 million aggregated turnover requirement but most businesses will only need to consider the first method.

Previous year turnover

If the aggregated turnover of the partnership or trust for the previous income year was less than \$2 million, it will be a small business entity for the current year.

This is regardless of its estimated or actual aggregated turnover for the current year.

Estimate of current year turnover

If the estimated aggregated turnover of the partnership or trust for the current income year is less than \$2 million, it will be a small business entity for the current year.

If you are estimating your turnover you need to assess whether you are more likely than not to have less than \$2 million aggregated turnover as at the first day of the income year or, if you have started a business part way through the year, as at the time you started your business. You should estimate your turnover based on the conditions you are aware of at the beginning of the income year or, if you have started a business part way through the year, at the time that you started your business. Partnerships or trusts that commenced carrying on a business in the current year need to calculate what their turnover would have been had the business been carried on for the entire year.

⊖ This method cannot be used if the aggregated turnover of the partnership or trust in each of the previous two income years was \$2 million or more.

For the purpose of working out the aggregated turnover of the partnership or trust for a previous year, the rules about aggregated turnover apply as if they had been in force for the 2006–07 income year.

Actual current year turnover

If the actual aggregated turnover of the partnership or trust is less than \$2 million as at the end of the income year, it will be a small business entity for that year.

This method is only needed if the first two tests cannot be met.

⊖ If the partnership or trust is a small business entity by means of this method, it cannot use the GST and PAYG concessions for that income year, as those particular concessions must have been chosen earlier in the income year.

Small business entities still using the simplified tax system (STS) accounting method

There are transitional rules for former STS taxpayers that deal with:

- continued use of the STS accounting method (refer to page 31)
- treatment of depreciating assets previously allocated to STS pools (refer to page 36).

There is a special rule that applies if the partnership or trust is winding up a business this year that it previously carried on and it was an STS taxpayer in the income year it ceased business. For more information, see *Concessions for small business entities – guide for small business operators* (NAT 71874).

ABBREVIATIONS

AAT	Administrative Appeals Tribunal	LIC	listed investment company
ABN	Australian business number	MLS	Medicare levy surcharge
ABR	Australian Business Register	NRAS	National rental affordability scheme
ABS	Australian Bureau of Statistics	PAYG	pay as you go
ACT	Australian Capital Territory	PE	permanent establishment
ADF	approved deposit fund	PSI	personal services income
ADI	authorised deposit-taking institution	PST	pooled superannuation trust
AEST	Australian eastern standard time (by legal time in the Australian Capital Territory)	R&D	research and development
ANZSIC	Australian and New Zealand Standard Industrial Classification	RBA	running balance account
BSB	bank state branch	RSA	retirement savings account
CFC	controlled foreign company	SGC	superannuation guarantee charge
CGT	capital gains tax	SIS	simplified imputation system
Commissioner	Commissioner of Taxation	STS	simplified tax system
DGR	deductible gift recipient	TAA 1953	<i>Taxation Administration Act 1953</i>
DTA	double tax agreement	TBNT	trustee beneficiary non-disclosure tax
DVA	Department of Veterans' Affairs	TFN	tax file number
EFT	electronic funds transfer	Trust Loss Act	<i>Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998</i>
ELS	electronic lodgment service	UCA	uniform capital allowance
EPA	environmental protection activities	UK	United Kingdom
ETO	entrepreneurs tax offset	US	United States of America
ETP	employment termination payment	www	world wide web
FBT	fringe benefits tax		
FIF	foreign investment fund		
FLIC	film licensed investment company		
FLP	foreign life assurance policy		
FMD	farm management deposit		
FMIS	forestry managed investment scheme		
FTDT	family trust distribution tax		
FTP	file transfer protocol		
GIC	general interest charge		
GST	goods and services tax		
ID	identification		
IRUs	indefeasible rights to use telecommunications cable systems		
ITAA 1936	<i>Income Tax Assessment Act 1936</i>		
ITAA 1997	<i>Income Tax Assessment Act 1997</i>		
ITR 1936	Income Tax Regulations 1936		
IWT	interest withholding tax		

PUBLICATIONS REFERRED TO IN THESE INSTRUCTIONS

Guides and instructions

(* refers to publications available only on our website)

Advanced guide to capital gains tax concessions for small business (NAT 3359)*

Australian film industry incentives 2009 (NAT 0954)

Business industry codes 2009 (NAT 1827)*

*Capital gains tax (CGT) concessions for small business – overview**

*Changes to foreign loss quarantining and foreign tax credit calculation rules - Update October 2008 - Fact Sheet**

Capital allowances schedule instructions 2009 (NAT 4089)

*Debt and equity tests: guide to the debt and equity tests**

Deductions for prepaid expenses 2009 (NAT 4170)*

Employment termination payments (NAT 70643)*

Federal Register of Legislative Instruments
(available at www.frli.gov.au)

Foreign income return form guide (NAT 1840)*

Foreign investment funds guide (NAT 2130)*

Forex: election out of the 12 month rule (NAT 9344)*

Guide to capital gains tax 2009 (NAT 4151)*

Concessions for small business entities – Guide for small business operators (NAT 71874)

Guide to depreciating assets 2009 (NAT 1996)

*Guide to thin capitalisation**

Income tax guide for non-profit organisations (NAT 7967)

Information for primary producers 2009 (NAT 1712)

Losses schedule instructions 2009 (NAT 4088)*

*Non-commercial losses: partnerships**

Rental properties 2009 (NAT 1729)

Research and development tax concession schedule instructions 2009 (NAT 6709)*

Schedule 25A instructions 2009 (NAT 2639)*

*Taxation Statistics**

Tax basics for small business (NAT 1908)

TaxPack 2009 (NAT 0976)

TaxPack 2009 supplement (NAT 2677)

You and your shares 2009 (NAT 2632)

TBNT payment advice (NAT 72967)*

*Trustee beneficiary non-disclosure tax**

*Trustee beneficiary rules**

Forms and schedules

ABN registration companies, partnerships, trusts and other organisations (NAT 2939)

Capital allowances schedule 2009 (NAT 3424)

Capital gains tax (CGT) schedule 2009 (NAT 3423)

*Family trust distribution tax payment advice**

Family trust election, revocation or variation 2009
(NAT 2787)

Interposed entity election or revocation 2009 (NAT 2788)

Losses schedule 2009 (NAT 3425)

Non-individual PAYG payment summary schedule 2009
(NAT 3422)

Partnership tax return 2009 (NAT 0659)

Partnerships and trusts rental property schedule 2009
(for ELS lodgments only)

PAYG payment summary – superannuation lump sum
(NAT 70947)

PAYG payment summary – employment termination payment
(NAT 70868)

PAYG Payment summary – withholding where ABN not quoted

Personal services income schedule 2009 (NAT 3421)

Schedule 25A 2009 (NAT 1125)

Tax file number application for companies and other organisations (NAT 3799)

Tax file number application or enquiry for a deceased estate (NAT 3236)

Thin capitalisation schedule 2009 (NAT 6458)

Trust tax return 2009 (NAT 0660)

Acts

A New Tax System (Australian Business Number) Act 1999

Development Allowance Authority Act 1992

Family Law Act 1975

Fringe Benefits Tax Assessment Act 1986

Income Tax Assessment Act 1936 (ITAA 1936)

Income Tax Assessment Act 1997 (ITAA 1997)

Income Tax (Transitional Provisions) Act 1997

*National Rental Affordability Scheme
(Consequential Amendments) Act 2008*

Radio Communications Act 1992

Taxation Administration Act 1953 (TAA 1953)

Tax Laws Amendment (2007 Measures No. 3) Act 2007

Tax Laws Amendment (2007 Measures No. 4) Act 2007

Tax Laws Amendment (2007 Measures No. 5) Act 2007

Tax Laws Amendment (2008 Measures No. 1) Act 2008

Tax Laws Amendment (Small Business) Act 2007

Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009

Practice statements, Taxation Determinations and Taxation Rulings

GSTR 2003/13 – Goods and services tax: general law partnerships

Law Administration Practice Statement PS LA 2001/12 – Lodgment of Ultimate Beneficiary Statements

Law Administration Practice Statement PS LA 2003/8 – Taxation treatment of expenditure on low cost items for taxpayers carrying on a business

Law Administration Practice Statement PS LA 2004/1 (GA) – Lodgment opportunity for family trust and interposed entity elections

Law Administration Practice Statement PS LA 2006/12 – Thin Capitalisation - Australian equivalents to International Financial Reporting Standards ('AIFRS') – Transitional Provision

Law Administration Practice Statement PS LA 2007/20 – Exercise of the Commissioner's discretion under section 109RB of Division 7A of Part III the Income Tax Assessment Act 1936 to disregard a deemed dividend in respect of the 2001–02 to 2006–07 income years.

Miscellaneous Taxation Ruling MT 2006/1 – The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number ('ABN')

Taxation Determination TD 94/82 – Income tax: does section 26AH of the Income Tax Assessment Act 1936 apply when investment options are 'switched' under an eligible policy?

Taxation Determination TD 2007/2 – Income tax: should a taxpayer who has incurred a tax loss or made a net capital loss for an income year retain records relevant to the ascertainment of that loss only for the record retention period prescribed under income tax law?

Taxation Determination TD 2007/11 – Income tax: imputation: franked distributions: qualified persons: does an entity have to be a qualified person within the meaning of Division 1A of former Part IIIAA of the Income Tax Assessment Act 1936 to avoid the application of paragraphs 207-145(1)(a) and 207-150(1)(a) of the Income Tax Assessment Act 1997 in respect of a franked distribution made directly or indirectly to the entity on or after 1 July 2002?

Taxation Ruling IT 2346 – Income tax: bonuses paid on certain life assurance policies – section 26AH – interpretation and operation

Taxation Ruling IT 2486 – Income tax: children's savings accounts

Taxation Ruling IT 2514 – Income tax: Company Schedule 25A: Information return for companies that transact business with related overseas entities

Taxation Ruling IT 2660 – Income tax: definition of royalties

Taxation Ruling TR 92/18 – Income tax: bad debts

Taxation Ruling TR 93/23 – Income tax: valuation of trading stock subject to obsolescence or other special circumstances

Taxation Ruling TR 94/8 – Income tax: whether business is carried on in partnership (including 'husband and wife' partnerships)

Taxation Ruling TR 97/11 – Income tax: am I carrying on a business of primary production?

Taxation Ruling TR 97/23 – Income tax: deductions for repairs

Taxation Ruling TR 97/25 – Income tax: property development: deduction for capital expenditure on construction of income producing capital works, including buildings and structural improvements, and addendum

Taxation Ruling TR 98/7 – Income tax: whether packaging items (ie containers, labels, etc) held by a manufacturer, wholesaler or retailer are trading stock

Taxation Ruling TR 2005/7 – Income tax: the taxation implications of partnership salary agreements

Taxation Ruling TR 2005/9 – Income tax: record keeping – electronic records

Taxation Ruling TR 2005/12 – Income tax: deductibility of interest expenses incurred by trustees on funds borrowed in connection with the payment of distributions to beneficiaries

Taxation Ruling TR 2007/3 – Income tax: effective life of depreciating assets (applicable from 1 July 2007)

Taxation Ruling TR 2007/4 – Income tax: entitlement to foreign tax credits under Division 18 of Part III of the Income Tax Assessment Act 1936 when foreign income is included in the net income of a trust estate

Taxation Ruling TR 2007/6 – Income tax: non-commercial business losses: Commissioner's discretion

Taxation Ruling TR 2008/4 – Income tax: effective life of depreciating assets (applicable from 1 July 2008)

NOTE

To find out how to get a Tax Office publication, see the inside back cover.

LODGMENT

The postal address for lodgment of the tax return is:

**Australian Taxation Office
GPO Box 9845
IN YOUR CAPITAL CITY**

The address must appear as shown above.

Do not post payments to this address; for payment information see **Payment** in the next column.

If you wish to write to the Tax Office, send your correspondence to:

**Australian Taxation Office
GPO Box 9990
SYDNEY NSW 2001**

PAYMENT

Payment options

You can make payments by several different methods. We prefer to receive payments by electronic means. Payments can be made electronically by **BPAY®**, direct debit or direct credit. However, payments can also be posted to us or made at Australia Post outlets.

Payments cannot be made in person at a Tax Office branch or shopfront. We do not accept payment by credit card.



BPAY® allows you to transfer funds electronically from your cheque or savings accounts to the Tax Office using your financial institution's phone or internet banking service. You can make most tax payments by using BPAY.

Quote the Tax Office biller code (**75556**) and use your EFT code as the customer reference number. Your EFT code is the string of numbers found immediately above the barcode on your payment slip. This slip is included in the reminder letter we sent you about the due date for income tax payment and lodgment of your tax return.

Your EFT code is also provided on the 'Payment options – details' screen (for business and tax agent portal users) or immediately below the biller code and titled EFT code, on the details screen of your ECI e-BAS (where access is available).

A receipt number is issued at the time the payment is made. Record it for future reference.

You should check with your financial institution for processing deadlines, to ensure your payments reach us on or before the due date. BPAY payments made out of hours, on a weekend or public holiday will not reach us until the next working day.

If you need assistance locating or identifying the EFT code phone **1800 815 886** or email **payment@ato.gov.au**

For more information about BPAY payments, contact your financial institution.

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Direct credit

Direct credit allows you to transfer funds electronically from your cheque or savings account using online banking facilities. To make a payment you will need the following information about us:

Bank Reserve Bank of Australia
BSB no. 093 003
Account no. 316 385
Account name ATO direct credit account

To ensure your payment is recorded correctly to your Tax Office account, you must record your EFT code in the direct entry system lodgment reference or in the description field. Your EFT code is the series of numbers found immediately above the bar code on your payment slip.

You should check with your financial institution for processing deadlines, to ensure your payments reach us on or before the due date. Direct credit payments made out of hours, on a weekend or public holiday will not reach us until the next working day.

For more information about direct credit payments visit **www.ato.gov.au** or phone **1800 815 886** or email **payment@ato.gov.au**

Direct debit

Direct debit provides you with the option of having your tax liability electronically debited from a nominated financial institution account (excluding credit card accounts).

To establish a direct debit, you will need to complete and send a *Direct debit request* (NAT 2284) form to us. The form gives us permission to debit your nominated financial institution account. Forms can be printed and sent by a tax agent using ELS software, or you can order one yourself by phoning **1800 802 308**. Tax agent and business portal users can also send requests to us via the portal's messaging facility.

Send your completed request to:

Electronic Funds Transfer Section
Australian Taxation Office

Mail: **PO Box 665**
Moonee Ponds VIC 3039

Fax: **(03) 9275 4240**

Note that the direct debit request must be signed by the account holder(s), and it must be received by us at least five working days before the first debit transaction.

For more information about direct debit payments visit **www.ato.gov.au** or phone **1800 802 308** or email **eft-information@ato.gov.au**

Mail

Post your payment with the payment slip to the address printed on the slip.

If a payment slip is not available, you can post payments to the appropriate address below. Include your full name, address, phone number, type of payment and ABN or TFN.

For NSW, ACT and QLD clients, send payments to:

Australian Taxation Office
Locked Bag 1793
PENRITH NSW 1793

For WA, SA, NT, TAS and VIC clients, send payments to:

Australian Taxation Office
Locked Bag 1936
ALBURY NSW 1936

Pins, staples, paper clips or adhesive tape should not be used.

Cheques and money orders should be for amounts in Australian dollars and payable to the 'Deputy Commissioner of Taxation'. They should be crossed 'Not negotiable' and must not be post dated. Do not send cash through the mail.

To avoid incurring penalties for late payment you should allow sufficient time for your payment to reach us on or before the due date.

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INDEX

12 month rule, 103
50% stake test, 111–12

A

abbreviations, 128
ABN (Australian business number), 20, 23
accuracy of returns, 9
acts, list of, 129
address of main business, 68
adjustable value, definition, 37
aggregated turnover, 73–4, 126
aggregation rules, 126–7
anti-avoidance rule, 94
assessable government industry payments, 32
assessment codes, trusts, 125
assets, 67
 see also depreciating assets
associated persons, payments to, 70
attributed foreign income, 60, 61, 82
Australian business number (ABN), 20, 23
Australian Business Register, 8
Australian Equivalents to International Financial Reporting Standards, 67
Australian investment income, 56

B

bad debts, 33–4, 111–12
balancing adjustment amounts, 37, 101
beneficiaries
 credit for tax withheld, 80, 81
 details for trust tax return, 80, 84
 entitlements, 78–9
 with no interest in trust capital, 63
 non-resident, 65–6, 74, 82–4
 tax payable, 28
 under 18 years of age, 116–22
 under a legal disability, 75–6, 84
blackhole expenditure, 108–9
bonuses from life insurance companies
 and friendly societies, 54, 55
borrowings for infrastructure, 100–1
bushfires, tax exemption for clean-up, 4
business address, 68
business and professional items, 67–76
business income and expenses, 30–1
business name, 67
business or hobby, distinguishing, 9
business purchases and other costs, 68
business status, 29
businesses
 definition, 126
 see also small business entities

C

capital allowances for primary producers, 110
capital allowances schedule, 18
capital gains, 59
capital gains distribution worksheet, 91
capital gains tax (CGT)
 deceased estates, 114
 limited roll-over for fixed trusts, 5
 listed investment companies, 55, 56, 76, 78
 and partnerships, 14, 44
 record keeping, 12
 small business concessions, 5–6
 trust cloning exception, removal of, 5

capital gains tax schedule, 18
capital works deductions, 48, 98–101
car leases, 107–8
carbon sink forests, 7
CGT assets, 44, 59, 97–8
CGT discount, 79
charitable trusts, 15, 27
child, definition, 53
children's savings accounts, 15
closely held trusts, 6, 65, 78, 122
closing pool balance, 39
closing stock, 33, 68–9
codes, 29, 125
collectables, 82
commercial debt forgiveness, 96–8
commission expenses, 32
Commissioner of Taxation, private rulings, 9–10
Commissioner's discretion, 78–9
company beneficiaries, 83
company, private, unpaid present entitlements, 72
computer software, depreciation, 6–7
concessional tracing rules, 112
consolidation status, 29
construction expenditure, 99
construction expenditure area, 99–100
contractor expenses, 32
control tests, 111–12
controlled foreign companies, 60, 96
corporate unit trusts, 16
cost addition amounts, definition, 37
cost of sales, 33
countries, specified, transactions with, 66
credit for tax withheld, 43, 47, 80
 ABN not quoted, 46, 81
credit for TFN amounts withheld, 47
creditors, 41, 69
credits from income, 46–7

D

death benefit employment termination payments (ETPs), 52–3, 78, 113
debt and equity swaps, 34
debt deductions, 95–6
debt forgiveness, commercial, 96–8
debtors, 41, 69
deceased estates, 78, 80, 112–16
deceased estates codes, 125
declarations, 85
decline in value of depreciating assets, definition, 37
deductible expenditure, 97
deductible gift recipient, 58
deductible losses, 97
deductions
 Australian investment income, 56
 capital works, 48, 98–101
 environmental protection expenses, 72, 102–3
 forestry managed investment schemes, 56
 interest, 48
 losses and outgoings, 57
 other, 57–8
 partnerships, 110–111
 project pools, 71, 103–4
 rent, 48

 section 40-880, 71, 108–9
 tax breaks, 5, 71, 109–10
dependant, definition, 53
depreciating assets, 37, 70–1
 and capital gains tax, 59
 computer software, 6–7
 deductions for, 56, 58, 101–2
 disposal, 42
 disposal of, 38
 effective life of assets, 7
 intangible, 70, 71
 loss on sale, 107
 low-cost assets, 37
 profit on sale, 108
 small business entities, 72
 small business pool deductions, 37–8
 tax breaks, 109–10
 uniform capital allowances, 101–10
depreciation deductions, 36–40
depreciation expenses, 35–36
destruction of buildings, 100
direct debits to ATO, 28–9
discretionary trusts, 27, 122
distribution of capital gains worksheet, 91
distribution of foreign income worksheet, 92
distribution of income worksheet, 88
distribution statements, 76–85
dividends, 51–2, 93–5
dividends worksheet, 90
Division 230, 4–5
double tax agreements, 66
due dates
 lodgment, 72
 tax debts, 17

E

e-Record, 12
early payments, credit for interest on, 43–4
electricity connection expenses, 104, 110
electronic funds transfer, 28–9
electronic lodgment, 9
eligible income, minor beneficiaries, 117
eligible investment business rules, 7
eligible non-dependant, definition, 53
eligible unit trust, definition, 66
employment termination payments (ETPs), 52–3, 78, 113
entrepreneurs' tax offset, 72–5, 82
environmental protection expenses, 72, 102–3
excepted income, minor beneficiaries, 117–18
excepted persons, 117
excepted trusts, 111
excluded trusts, 122
exempt dividends, 94
exemption from lodgment of tax return, 14
expense reconciliation adjustments, 41
expenses
 bad debts, 33–4
 contractors, subcontractors, commissions, 32
 cost of sales, 33
 depreciation, 35–6
 environmental protection, 72
 foreign resident withholding, 32
 interest, 35, 57

- leases, 34
- motor vehicles, 39
- prepaid, 32, 42
- record keeping, 33, 34, 35, 40
- rent, 34
- royalties, 35, 71–2
- salaries and wages, 69
- superannuation, 33
- tax-related, 57

F

- family group, definition, 22, 26
- family trust distribution tax, 22, 26, 45, 51, 123
- family trust elections, 23–6
 - changes to, 6, 8–9
- family trust revocations, 24, 25
- farm management deposits, 110, 122
- film industry incentives, 58, 110
- film licensed investment company
 - distributions, 51
- film losses, 62
- final tax return, 22, 28
- financial institutions, overseas, interest paid to, 66
- fixed trusts, 5, 27, 111
- fixed unit trusts, 27
- foreign exchange (forex) gains or losses, 8, 55, 102, 103
- foreign hybrid entities, 8
- foreign income, 60–67
- foreign income distribution worksheet, 92
- foreign income tax offsets, 62, 66, 82
 - new rules, 6, 19
- foreign investment funds, 60, 61
- foreign life assurance policies, 60, 61
- foreign losses, 6, 19, 61–2
- foreign resident withholding, 7, 31, 32, 43, 47, 80
- foreign source dividends, 94
- foreign source losses, 111
- foreign tax credits, *see* foreign income tax offsets
- foreign trusts, 59, 60
- forestry managed investment schemes, 48–9, 56, 59
- forex gains or losses, 8, 55, 102, 103
- forgiven debt, 96–8
- former spouse, definition, 22, 26
- former stepchild, definition, 22, 26
- former widow or widower, definition, 22, 26
- forms and schedules, list of, 129
- franked amounts, 52
- franked dividends, 93–5
- franking credits, 46–7, 52, 62, 81, 94
- friendly societies
 - bonuses from, 54, 55
 - funeral policies, 113
- fringe benefits, employee contributions, 71
- funeral policies, 113

G

- general interest charge, 10
- gifts, 58
- goods or services, selling, 30
- government industry payments,
 - assessable, 32
- grapevines, 102, 104–5, 110
- gross payments, ABN not quoted, 31
- GST payable, 30, 31
- guides and instructions, list of, 129

H

- hire purchase agreements, 34, 105
- hobby or business, distinguishing, 9
- holding period rule, 93–4
- horticultural plants, 102, 104–5, 110
- hours taken to complete tax return, 85
- hybrid trusts, 27

I

- imputation system, 93–5
- income, 31–2
 - assessable government industry payments, 32
 - bonuses from life insurance companies and friendly societies, 54, 55
 - dividends, 51–2
 - employment termination payments (ETPs), 52–3
 - foreign exchange (forex) gains or losses, 55
 - foreign resident withholding, 31
 - forestry managed investment schemes, 48–9
 - gross payments ABN not quoted, 31
 - interest, 50
 - listed investment company capital gains, 55
 - non-primary production, 45–6
 - from other partnerships or trusts, 44–5
 - personal services income, 67
 - primary production, 45
 - rent, 47–8
 - royalties, 55, 95
 - securities, 50, 54
 - share of credits from, 46–7
 - superannuation lump sums, 52
- income injection test, 112
- income reconciliation adjustments, 40
- income tax debts, due date, 17
- income tax, deceased estates, 114
- indefeasible interest, definition, 78
- industry codes, 29
- information matching, 9
- infrastructure borrowings, 100–1
- insurance premiums, 58
- intangible depreciating assets, 70, 71
- inter vivo trust codes, 125
- interdependency relationship, definition, 53
- interest
 - assessable, 50
 - charges by ATO, 10
 - deductions, 48
 - on early payments, credit for, 43–4
 - paid to non-residents, 66
 - paid to overseas financial institutions, 66
- interest expenses, 35, 57
 - overseas sources, 71
- interest worksheet, 89
- international related parties, definition, 65
- international taxation, 8
- international transactions, 65–6
- internet, using to sell goods or services, 30
- interposed entity elections
 - changes to, 6, 8–9
 - partnership tax return, 20–2
 - revocations, 21, 24, 25
 - trust tax return, 23–6
- investment allowances, 109–10
- investment income reporting, 17
- irrigation water providers, 106, 107

K

- key financial information, 67

L

- landcare operations, 72, 105–6, 110
 - tax offsets, 64
- lease expenses, 34
- leases, luxury cars, 107–8
- lessee or holder of capital works, 98
- liabilities, 67
- life insurance companies, bonuses from, 54
- life tenant, definition, 63
- limited partnerships, 14
- limited recourse debt, 107
- listed countries, 60
- listed investment company capital gains, 55, 56, 76, 78
- lodgment
 - address, 131
 - electronic, 9
 - partnership tax return, 13–14
 - trust tax return, 15
- lodgment day, definition, 72
- loss on sale of depreciating assets, 107
- losses and outgoings, 57
- losses, deductible, 97
- losses information, 64
- losses, partnerships, 111
- losses schedule, 18, 63, 64
- losses, trusts, 111–12
- low-cost assets, 37
- low-cost items, 36
- low-value pools, 107
- luxury car leases, 107–8

M

- main business activity, 29
- managed investment trusts
 - credit for tax withheld, 7, 47, 80
 - election to use CGT treatment, 4
- Medicare levy reduction or exemption, 75–6
- minors, *see* beneficiaries: under 18 years of age
- motor vehicle expenses, 39

N

- name of business, 67
- name of partnership, 20
- name of trust, 23
- National Rental Affordability Scheme, 6, 75, 82
- natural disasters, 4
- net capital gains, 59–60, 82
- net capital losses, 64
- net income or loss, 42, 64
- New Zealand franking companies, 61, 62, 81, 93, 94
- non-commercial losses, 109
- non-disclosure tax, 45, 46
- non-fixed trusts, 111, 112
- non-individual PAYG payment summary schedule, 19
- non-primary production distributions, 45–6
- non-resident beneficiaries, 65–6, 74, 82–3
- non-resident insurers, 58
- non-resident partners, 13
- non-resident trustee beneficiaries, 82–4
- non-resident trusts, 84
- non-residents
 - dividends or interest paid to, 94, 95
 - interest paid to, 66
- non-taxable advice, 28

O

opening stock, 42, 68
overseas transactions, 65–6
overseas transactions record keeping, 12
ownership tests, 111–12

P

partnerships, 13–14
 deductions, 110–11
 name, 20
 name of partner to receive notices, 20
 record keeping, 11
 tax return, 20–2
PAYG instalments and entrepreneurs'
 tax offset, 75
PAYG payment summary schedule,
 non-individual, 19
payment of tax debt, 17, 131–2
payments to associated persons, 70
penalties imposed by ATO, 10–11
personal services income, 67
personal services income schedule, 19
political contributions, 58
pool deductions, 37–8
pool of construction expenditure, 99
pool values, 103–4
practice statements, list of, 130
prepaid expenses, 32, 42
prescribed persons, 117
primary producers, capital allowances
 for, 110
primary production distributions, 45
private company entitlements, 72
private health insurance tax offset, 16
private rulings by Commissioner, 9–10
profit on sale of depreciating assets, 108
project pool deductions, 71, 103–4
proprietors' funds, 67
public officers for trusts, 15
public trading trusts, 16–17
public unit trusts, 7, 16–17, 27
publications, list of, 129–30
purchase of business, 11

Q

qualified persons, 93–4

R

real control, 77–8
reconciliation items, 31, 40–2
reconciliation statement worksheet, 86–7
record keeping, 11–12
 expenses, 33, 34, 35, 40
 income, 50, 54
 payments to associated persons, 70
 royalties, 72, 95
 tax losses, 12, 63
reducible assets, 97–8
refunds from ATO, 28
related payments rule, 93
relieving provisions, 122
rent, 47–8
rent expenses, 34
rental property schedule, lodging, 9
repairs and maintenance, 40
reporting requirements, trustees, 6, 122–4
research and development
 expenditure, 111
resident unit trust, 16
royalties, 55, 95
royalty expenses, 35, 71–2

S

salary and wage expenses, 69
sale and harvest receipts, 48–9
sale of business, 11
schedules, 18–19
section 40-880 deductions, 71, 108–9
section 404 countries, 60
securities, 50, 54, 57
share traders, 94
shares, gifts of, 58
shortfall interest charges, 10
simplified imputation system, 94
simplified tax system (STS), 127
 see also STS taxpayers, former
small business 50% reduction, 79, 82
small business entities
 annual turnover, 73–4
 cost of sales, 33
 depreciating assets, 72
 depreciation deductions, 18, 36–9
 entrepreneurs' tax offset, 18, 72–5
 income exceptions, 30
 net income, 74, 82
 pool deductions, 37–8
 tax concessions, 126–7
 trading stock, 68
special disability trusts, changes to, 4
specified countries, transactions with, 66
spouse, definition, 53
spouse, former, definition, 22, 26
statements of distribution
 partnership tax return, 76–8, 85
 trust tax return, 78–85
status of business, 29
stepchild, former, definition, 22, 26
stock
 closing, 33, 42, 68–9
 opening, 42, 68
 trading stock election, 72
STS taxpayers, former, 31, 36, 47, 56,
 57, 68
 reconciliation adjustments, 41–2
subcontractor expenses, 32
subscriptions, 58
superannuation deductions, 111
superannuation expenses, 33
superannuation guarantee charge, 33
superannuation lump sums, 52, 78, 113

T

tax breaks for small businesses and
 general businesses, 5, 71, 109–10
tax file number (TFN)
 former partnership, 22
 partnership tax return, 20, 22
 trust tax return, 23
tax losses, 12, 62–4, 97
tax obligations, simplifying, 36
tax office contacts, 136–7
tax offsets
 for entrepreneurs, 72–5, 82
 and franked dividends, 93
 infrastructure, 101
 landcare and water facilities, 64
 National Rental Affordability Scheme, 75
 private health insurance, 16
 trusts, 15
tax payable by trustee, 28, 78–9
tax payable, minor beneficiaries, 121–2
tax-related expenses, 57
tax return, final, 22, 28

tax return lodgment

 partnerships, 13–14
 trusts, 15
tax withheld, see credit for tax withheld
taxable purpose, 37, 38
taxable purpose proportion, 37
taxation determinations, list of, 130
taxation of financial arrangements,
 changes to, 4
taxation rulings, list of, 130
TB (trustee beneficiary) statements, 6,
 84, 122–3
telephone line connection expenses,
 104, 110
termination values
 definition, 37
 of depreciating assets, 71
test individual, varying, 25
TFN amounts withheld, 47, 50, 52, 81
thin capitalisation, 34, 95–6
thin capitalisation schedule, 19
time spent completing tax return, 85
Tobacco Growers Adjustment Assistance
 Program 2006, 7
trade creditors, 41, 69
trade debtors, 41, 69
trading stock, 42, 68–9
trading stock election, 72
trading trust, 16–17
Trans-Tasman imputation, 93–5
transferor trusts, 60–1
transitional provisions, thin capitalisation, 96
trustee beneficiaries
 definition, 122
 non-resident, 82–4
 reporting requirements, 6, 122–4
trustee beneficiary non-disclosure tax, 45,
 46, 51, 84, 124
trustee beneficiary (TB) statements, 6, 84,
 122–3
trustee entitlement to entrepreneurs'
 tax offset, 74
trustee, tax payable by, 28, 78–9
trusts, 15–17
 assessment codes, 125
 loss provisions, 16, 111–12
 name of trustee to receive notices, 23
 non-resident, 84
 record keeping, 12
 tax return, 23–9
 types of, 27, 111
turnover, 126–7

U

undeducted construction expenditure, 100
unfranked amounts, 51–2
unfranked dividends, 94
uniform capital allowances, 36, 101–110
unit trusts, 16–17
unlisted countries, 60

W

wage and salary expenses, 69
water facilities, 72, 102, 105–7, 110
 tax offsets, 64
widow or widower, former, definition, 22, 26
withholding tax
 interest expenses, 35
 lease expenses, 34
 non-residents, 7, 71, 72
 royalties, 35, 95
worksheets, 86–92

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